TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1931~~ 1932

No. ~~778~~ 15

INTERSTATE COMMERCE COMMISSION, PETITIONER

vs.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD COLONY RAILROAD COMPANY, BOSTON & PROVIDENCE RAILROAD CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MARCH 7, 1932
CERTIORARI GRANTED APRIL 18, 1932

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 773

INTERSTATE COMMERCE COMMISSION, PETITIONER

vs.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD COLONY RAILROAD COMPANY, BOSTON & PROVIDENCE RAILROAD CORPORATION (MASSACHUSETTS), BOSTON & PROVIDENCE RAILROAD CORPORATION (RHODE ISLAND), PROVIDENCE, WARREN & BRISTOL RAILROAD COMPANY, THE HARLEM RIVER AND PORT CHESTER RAILROAD COMPANY, HOLYOKE & WESTFIELD RAILROAD COMPANY, PROVIDENCE & WORCESTER RAILROAD COMPANY, CHATHAM RAILROAD COMPANY, AND NORWICH & WORCESTER RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia

No. 5466.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY et al., Appellants,

vs.

INTERSTATE COMMERCE COMMISSION.

a Supreme Court of the District of Columbia.

At Law.

No. 78291.

UNITED STATES OF AMERICA at the Relation of THE NEW York, New Haven and Hartford Railroad Company et al., Relators,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition for Writ of Mandamus.*

Filed July 3, 1930.

Supreme Court of the District of Columbia.

At Law.

No. 78291.

UNITED STATES OF AMERICA at the Relation of THE NEW York, New Haven and Hartford Railroad Company et al., Relators,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

To the Supreme Court of the District of Columbia:

Now come the relators, The New York, New Haven and Hartford Railroad Company, Old Colony Railroad Com-

pany, Boston & Providence Railroad Corporation (Massachusetts), Boston & Providence Railroad Corporation (Rhode Island), Providence, Warren & Bristol Railroad Company, The Harlem River and Port Chester Railroad Company, Holyoke & Westfield Railroad Company, Providence & Worcester Railroad Company, Chatham Railroad Company, and Norwich & Worcester Railroad Company, and respectfully show to the court:

I.

The Parties.

The relators are and were at all times herein mentioned corporations duly organized and existing according to law and together own a line of railroad located in the states of New York, Connecticut, Rhode Island, and Massachusetts, its main line extending from New York City, New York, to Boston, Massachusetts. They are all common carriers and subject to the Act of Congress of Febru-
2 ary 4, 1887 entitled "An Act to Regulate Commerce," now known as the "Interstate Commerce Act," and the acts supplemental thereto and amendatory thereof, including the Act of March 1, 1913, commonly known as The Valuation Act, which now appears as Section 19(a) of the Interstate Commerce Act. The New York, New Haven & Hartford Railroad Company is lessee of and operates most or all of the railroad property of the other relators and all of them together constitute what is known as the New York, New Haven & Hartford System. They have been dealt with by the respondent as one system in the proceedings under the Valuation Act hereafter described and for convenience they will be referred to herein collectively as the "Carrier". The respondent is the commission as now constituted, created and established under Section 11 of the Interstate Commerce Act and will be referred to herein as the "Commission".

II.

The Proceedings Before the Commission.

A few months after the passage of the Valuation Act the Commission, pursuant to the provisions thereof, entered upon an investigation known as Valuation Docket No. 311 to

ascertain the value of the property owned or used by the Carrier as of June 30, 1915. On or about December 2, 1922 the Commission, having completed its investigation, published and served upon the Carrier a copy of its tentative valuation. In the tentative valuation the Commission failed to ascertain and report the value of the Carrier's interest in its passenger terminals and the approaches thereto in New York City and in Boston.

Within thirty days after the service upon it of the tentative valuation the Carrier filed its protest against the same,
protesting among other things against the failure of
3 the Commission to ascertain and report the value of
its interest in said terminals and approaches. Hearings were held on the protest before an examiner of the Commission at various times fixed by the Commission from December 1923 to September 1925 inclusive. A large amount of testimony and documentary evidence was presented by the Carrier in support of the issues raised in its protest including that relating to the said terminals and approaches. No evidence was offered by the Commission or anyone else in opposition to the Carrier's testimony on the latter issue. The issues so raised were submitted to the Commission on May 18, 1926.

On or about January 14, 1930 the Commission made public and served on the Carrier its report and order dated November 13, 1929 purporting to fix the final value "for rate-making purposes" of the property of the carrier. This report and order, herein referred to as "the final valuation", is contained in the published reports of the Commission (30 Val. Rep. 1). At page 42 the Commission found that "the value for rate-making purposes of the property of the carrier owned and used for purposes of a common carrier, including $4,650,000 for working capital, is $256,400,000; for property used but not owned, $120,615,724; and for property owned but not used $3,516,650." The detail of these figures is given in the report and order and shows that nothing was included for the property, rights or interests of the Carrier in the New York and Boston terminals and approaches. On the contrary the report expressly states that they are not entitled to valuation. A copy of the report and order is hereto attached, made a part hereof and marked Exhibit 1, the portions of the report relating to the New York and Boston terminals appearing at pages 31 to

37 inclusive. At page 90 of the report the Commis-
4 sion incorporated therein by reference, as part of the report, Appendix 3, *Texas Midland Railroad*, 75 Interstate Commerce Reports 1, 108 "for a statement of the methods employed" in making the valuation. A copy of that part of said Appendix entitled "To Whom Carrier Property is Inventoried" together with an explanatory extract from the decision referred to entitled "Property Used but not Owned" is hereto attached, made part hereof, and marked Exhibit 2.

The Carrier made due application to the Commission by petition praying that the proceeding be reopened for reargument, reconsideration and rehearing upon and in respect of the following matters contained in the petition:

1. The failure of the Commission to assign any value for the rights of the Carrier to use the Grand Central Terminal and the approaches thereto;
2. The failure of the Commission to assign any value for the rights of the Carrier to use the property of The Boston Terminal Company; and
3. The action of the Commission in valuing the property "for rate-making purposes."

A copy of the application is hereto attached, made part hereof, and marked Exhibit 3. At a General Session of the Commission held on May 5, 1930 the petition was denied without opinion.

III.

The Property in Issue.

The main passenger line of the Carrier extends from the heart of New York City at the Grand Central Terminal to the heart of Boston at the South Station. It constitutes one of the most important and intensively used passenger routes in the country. The property in this route and the right to operate it are immensely valuable. The Carrier engages in a general passenger carrying business,
5 and has held itself out by tariffs regularly filed with the Commission, by schedules of service regularly published, and otherwise to carry passengers to and from these terminals. It is under legal obligation to render this service. It annually serves a vast number of passen-

gers at these terminals. The service it renders is necessary to the general transportation business of the country, and is a great convenience to the traveling public. The Carrier's service performed through these terminals is rendered at a profit. Their use is vital to the successful operation of other portions of the system. If the Carrier could not run its trains into and out of the Grand Central Terminal but had to stop them at Woodlawn Junction, 12 miles north of 42nd Street, the value of its property and its right to operate it would be tremendously diminished. The same is true to a lesser degree in respect of the South Station and its approaches in Boston.

The Carrier's property rights in, and its rights to run its trains into and out of these two terminals are absolute and perpetual. From the point of view of the carrier's railway property, whether considered merely as a piece of physical property or as a going transportation system, these rights are of very great and readily ascertainable value.

The terminal property and approaches in New York, which are in issue, consist of the Grand Central Terminal, facing on 42nd Street in New York City, the tracks running into the Grand Central Terminal southward from Woodlawn Junction, New York, a distance of approximately twelve miles, a portion of the coach yard at Mott Haven and the electrical generation and transmission system. This property is used jointly by the Carrier and The New York Central Railroad Company. The record made
6 before the Commission shows the proportion of use made of the several parts of this property by the Carrier as of the valuation date and the values which its witnesses placed upon its property rights in, or its right to the use of, each such part thereof. The figures are as follows:

Description of property.	Per cent of use.	Value.
Grand Central Terminal	41.93	$39,664,068
Fifty-ninth Street to Mott Haven	41.93	8,820,835
Mott Haven to Woodlawn	62.95	4,849,762
Mott Haven Yard	43.74	1,276,279
Distribution system	24.00	879,587
Total		$55,490,531

Testimony showing the basis and derivation of these figures was presented by the carrier in the course of the hearings upon the protest. No evidence was presented by the commission or any other party in opposition thereto.

The terminal property and approaches in Boston consists of the South Station in the city proper and the tracks leading into it from a distance of something under one mile. It belongs to The Boston Terminal Company and is jointly used by the Carrier and The New York Central Railroad Company as lessee of the railroad of Boston & Albany Railroad Company. The record shows that the proportion of use made of this property by the Carrier as of valuation date was 75% and that the value claimed by the Carrier for its proportionate use was $17,802,000. No evidence was presented in opposition thereto by the Commission or by any other party.

IV.

The Duty of the Commission.

The Commission was, and is, under a statutory duty to value this property, and to report the value thereof,
7 on a basis susceptible of use for any purpose authorized by the Interstate Commerce Act. Subdivision (a) of Section 19 (a) of the Act provides:

"That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. * * *"

Subdivision (b) (First) directs the Commission to ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for carrier purposes, "the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation" and an analysis of the methods by which the costs were obtained. It then continues:

"The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier."

with an analysis of methods of valuation employed. Subdivision (b) (Second) directs the Commission to state the

original cost of all lands, rights of way and terminals owned or used for the purposes of a common carrier and "the present value of the same." Subdivision (b) (Third) directs a like report as to the original cost and "present value" of property held for other purposes. Subdivision (c) requires the investigation to show "the value of the property of every common carrier" as a whole and separately by states. Subdivision (i) makes the final valuation prima facie evidence "of the value of the property" in all proceedings under the Act and in all judicial proceedings for its enforcement or to enjoin, set aside, annul or suspend orders of the Commission. The foregoing provisions of the Act imposed on the Commission the duty of investigating, ascertaining and reporting the actual fair value of the Carrier's property. Neither expressly nor by implication was it to be any special or different
8 value from that recognized and used in commercial transactions. The property to be valued included that held for other than common carrier purposes yet the Act directs the valuation of both kinds of property in the same terms and without distinction as to method or result. The Commission was required to report the "value" of the property without qualification. It was not authorized to report a value for any particular purpose or for any limited use. The several proceedings under the Act in which the final valuation will be prima facie evidence, to which more particular reference is hereinafter made, differ from each other in such essential respects that no valuation other than at the actual fair value of the property could be used.

V.

The Final Valuation.

The Commission has arbitrarily refused to find a value for what are admitted in its report to be valuable rights of the Carrier.

The Carrier contends that its right to the use of the tracks from Woodlawn Junction to Grand Central Terminal under the agreements and legislation hereinafter described in subdivision A of paragraph VII hereof is a perpetual easement in the railroad of the New York and Harlem Railroad Company now leased to the New York Cen-

tral which is prior and superior to said leasehold of the New York Central and therefore a property interest owned and used by the Carrier. It contends that its right in perpetuity to the joint use with The New York Central of the Grand Central Terminal itself under said agreements and legislation and the additional agreements hereinafter described in subdivision B of said paragraph is an undivided property interest therein owned and used by the carrier. It contends that its right to the joint use with the New York Central of The Boston Terminal Company's property under the legislation hereinafter described in subdivision C of said paragraph is a property interest therein owned and used by the Carrier. Each of these contentions was duly incorporated into the Carrier's protest of the tentative valuation and is discussed in the final valuation under the headings "Terminal Property at New York City" and "The Boston Terminal Company."

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The Commission has not undertaken to determine whether these rights are property interests as contended by the Carrier. It has not valued the property as owned and used, nor has it valued the property as used but not owned, nor has it valued the right to use the property. It has decided only that in ascertaining the value of the property owned or used by the Carrier "for rate-making purposes" no specific value should be reported for these rights. As to the use of the tracks from Woodlawn to the Grand Central Terminal the Commission reports:

"In our finding of value of the property owned or used in common carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right. We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole. Nevertheless, for the purpose of finding a rate base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers."

As to the joint use of the Grand Central Terminal it reports:

"The right to use these extensive terminal facilities is a commercially valuable contract right owned by the carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value, for rate-making purposes, of the carrier's property owned or used in common carrier service, no specific value will be reported for the right of the carrier to the use of this property."

As to the joint use of The Boston Terminal Company property it approves the omission from the tentative valuation of a value "for the carrier's right to use this terminal" as being in accord with its finding in respect of the joint use of the Grand Central Terminal property.

VI.

"Value for Rate-Making Purposes."

The Commission was without authority to report a value "for rate-making purposes" or for any other particular purpose. Its statutory duty was to ascertain and report the actual fair value of all property owned or used by the Carrier.

Subdivision (2) of Section 15 (a) of the Interstate Commerce Act provides that the final valuation under Section 19 (a) of the railway property of any carrier held for and used in the service of transportation shall be deemed by the Commission to be the value thereof for the purpose of determining the aggregate value of the railway property so held and used by the carriers as a whole or by groups or territories upon which they are entitled to a fair return through reasonable rates to be established by the Commission. It is with special reference to this particular one of its functions, rate-making, that the Commission has refused to place a value on the Carrier's rights in, and rights to the use of, the tracks from Woodlawn to the Grand Central Terminal and to the joint use of the Grand Central Terminal property and of The Boston Terminal Company property. The Commission is concerned over what it claims might result in a duplication of value in that under

its accounting rules the rent paid by the Carrier for these rights of use in chargeable to joint facility rents in
11 determining the Carrier's "net railway operating income" as defined in Subdivision (1). In its report the Commission says:

"The rent is chargeable to joint-facility rents, which account is described as—

This account shall include amounts payable accrued as rent for tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies or individuals, and in the joint use of which the accounting company participates.

"This account is taken into consideration when computing the 'net railway operating income' under section 15a of the act. In this same section it is provided that the final value which we find under section 19a shall be deemed the value for the purpose of determining the aggregate value of the property. To report this property for the purpose of rate-making either as property owned and used or used but not owned by the carrier would result in a duplication."

The Carrier denies that any such duplication would result if the value of the property were properly apportioned as between the several carriers having interests therein, but in any event the Commission has no power to disregard the explicit direction of Section 19 (a) to ascertain and report the value of all the property owned or used by a carrier in order to give effect to its conception of the proper rate base under Section 15(a) and defend its present accounting rules.

The Commission has no discretion to exclude any part of the property owned or used by a carrier. The purposes for which the final valuation may be used are not confined to rate-making. Under subdivision (6) of Section 15 (a) itself one-half of the annual net railway operating income of a carrier in excess of 6% of the value of the railway property held or used by it in the service of transportation is recoverable by the Commission for the purpose of establishing a general railroad contingent fund and the final valuation under Section 19 (a) is deemed to be the
12 value of such property. Under Subdivision (6) (b) of Section 5 the value of properties sought to be

consolidated as part of the plan for the consolidation of railway properties to be adopted by the Commission is to be determined under Section 19 (a). Under Subdivision (6) of Section 15 in prescribing the division of joint rates the Commission is required to give due consideration to a fair return upon the railway property of the respective carriers concerned. In the exercise of its jurisdiction under Subdivision (2) of Section 20 (a) over the issuance of securities by a carrier the value of its property is an important consideration. Subdivision (i) of Section 19 (a) makes the final valuation prima facie evidence of the value of the property in all proceedings under the Act and in all judicial proceedings for its enforcement and in all judicial proceedings to enjoin, set aside, annul or suspend any order of the Commission.

All of these uses, other than for rate-making purposes, to which the final valuation may be put draw in question not the value of the property of carriers as a whole or by groups or territories, as in the case of rate-making, but the value of the property of the particular carrier in order to determine how much of its own excess income the Commission may recapture, what it is to receive in securities for the properties it turns into a consolidation, what shall be its own proportion of a joint rate, or to what extent it may issue its own securities. For rate-making purposes, involving a fair return on the aggregate railway property as between the carriers as a whole and the public, it may be immaterial whether this Carrier's rights in, and right to use, the tracks from Woodlawn to the Grand Central Terminal and to the joint use of the Grand Central Terminal property and of The Boston Terminal Company
13 property is valued separately to this Carrier or whether these rights are ignored and the whole value of the tracks and terminal property valued, as here, to the New York Central, but Section 19 (a) prescribes the ascertainment and report of a value on the basis of which rights between this Carrier and other carriers are to be determined. That value must be the actual fair value of the property and the action of the Commission in limiting it to the value for rate-making purposes constitutes an attempt to exercise legislative power not vested in it by law.

For purposes of group rate-making the Commission has recognized New England, which includes the entire system

of the Carrier, as a separate group from what is known as Trunk Line territory, which includes the New York Central. Proper allocation of the value of the jointly used New York City terminal facilities as between those two carriers is therefor essential even for rate making.

VII.

The Excluded Property Rights.

The carrier contends, and hereby alleges, that its rights to the use of the tracks from Woodlawn to the Grand Central Terminal and to the joint use of the Grand Central Terminal itself and of The Boston Terminal Company property were, and are, property interests owned and used by it for its purposes as a common carrier. The Commission admits that these rights are valuable and their value should have been ascertained and reported. Subdivision (a) of Section 19(a) directs the Commission to investigate, ascertain and report the value of all the property owned and used by the carrier. In performing this duty the Commission is not confined to a valuation of the physical property for Subdivision (b) (First) directs it to "ascertain
14 and report separately other values, and elements of value, if any, of the property" of such carrier. The rights in question constituted an estate in perpetuity in the tracks and terminal property and in its report the Commission recognized in terms that these rights were an element of value of the Carrier:

"We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole."

The Carrier introduced in evidence before the Commission pertinent statutes, agreements, leases and other documents relating to its rights in, and rights to use, the tracks and terminal properties. No question was raised as to their authenticity. The carrier also introduced testimony relating to the circumstances surrounding the making of the several leases and agreements. No other testimony on the subject was introduced. The evidence showed that the carrier has a perpetual easement in the railroad of the New York and Harlem Railroad Company from Woodlawn Junc-

tion to Forty-third Street, where the tracks of the railroad end, and an undivided interest in the Grand Central Terminal under a perpetual lease from the New York and Harlem and The New York Central Railroad Companies and an undivided interest in the property of the Boston Terminal Company under the charter of that corporation which is likewise perpetual.

A. The Title of the Carrier in the Tracks from Woodlawn to Forty-third Street.

The New York and Harlem Railroad Company was incorporated by act of the Legislature of New York on April 25, 1831 with power to construct and operate a railroad on Manhattan Island. The Legislature reserved the power to alter, amend, modify or repeal the act. Between 1831 and 1844 the New York and Harlem under that and subsequent legislative authority extending its franchise was opened for public use from White Plains into New York City.

The New York and New Haven Railroad Company was incorporated by act of the Legislature of Connecticut on June 7, 1844 with power to construct a railroad from New Haven, Connecticut, to the New York state line. It then applied to the Legislature of the State of New York for power to construct its railroad from the state line into New York City, but the charter was not granted. On January 10, 1846 the New York and Harlem and an association of persons representing the New York and New Haven entered into a written agreement providing that both parties should use their best efforts to obtain the passage of an act by the Legislature of New York granting a charter to the New York and New Haven to extend its railroad into New York to connect with the railroad of the New York and Harlem at William's Bridge, Westchester, and the agreement provided that when the New York and New Haven should have completed its road from William's Bridge to Byram River, the state line, it should have the right to run its cars and engines over the railroad of the New York and Harlem into New York City. The actual point of connection was Woodlawn Junction, just north of William's Bridge. On January 22, 1846 this agreement was embodied in a contract which was to continue in force during the

term of their respective charters and any renewals thereof. On May 11, 1846 the Legislature of New York authorized the New York and New Haven to extend its railroad from the state line and to connect with the railroad of the New York and Harlem at William's Bridge and in the same year the Legislature of Connecticut authorized the New York and New Haven to accept the franchise.

As a result of differences of opinion between the parties about the contract of January 22, 1846 a new contract be-
tween the New York and New Haven and the New
16 York and Harlem was entered into on March 17, 1848. This contract provided that it should take the place of the contract of January 22, 1846 and granted to the New York and New Haven the following rights:

"Fourth. It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction by Byram River, they shall have the right to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlem Railroad Company from the point of junction aforesaid to and into the city of New York, and as far over the same in the said city as the said Company's road shall extend, not however below the intersection of said railroad and Pearl Street in said city,—the said New York and New Haven Company furnishing their own haulage."

and these rights were granted in perpetuity because the charter of the New York and New Haven from the State of Connecticut was perpetual and the new contract provided:

"Fourteenth. It is mutually understood and agreed that this Agreement shall continue in force and be binding upon both companies during the terms of their charters respectively and for all renewals thereof but either party may terminate the covenants for compensation numbers Six, Seven and Eight and Nine of this Agreement upon any day after the expiration of three years from the commencement of the use of the road of The New York and Harlem Railroad Company by the New York and New Haven Railroad Company of which not less than Twelve months no-

tice shall have been given in writing to the other. But in that event it is mutually understood and agreed that the two Companies shall and will forthwith on service of said notice proceed to arrange the terms of new covenants for the above purposes and if they cannot agree upon the terms of said new covenants then the matters or points in disagreement shall be submitted to arbitrators in the usual mode whose award shall be binding upon the parties and be embodied in the said new covenants for the ensuing five years and at the end of each succeeding five years new covenants in regard to compensation shall be made in like manner upon like notice being given by either party."

On March 29, 1848 the Legislature of the State of New York amended the charter of the New York and Harlem in the following language:

"The New York and New Haven railroad company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business, over the road of the New York and Harlem railroad company, from the point of junction of the roads of said companies at or near William's Bridge, in the county of Westchester, to the City of New York, and as far into the said city as the said Harlem railroad may extend,
17 upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a copy of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this state; and to take, transport, and convey persons and property upon the said Harlem Railroad, by the power and force of steam or animals or any mechanical power or combination of the same."

Pursuant to the terms of this statute the agreement between the two companies was duly authenticated and filed in the office of the Secretary of State as required by the statute. This agreement was thus virtually incorporated by reference into the act of the Legislature.

The New York and New Haven operated its trains under the new contract to Canal Street, New York City, at which point *to* established its terminal. In 1857 its terminal was moved to Twenty-seventh Street and Fourth Avenue and

in 1872 to Forty-second Street, the present site of the Grand Central Terminal.

On August 6, 1872 the New York and New Haven was consolidated with the Hartford and New Haven Railroad Company under the name The New York, New Haven & Hartford Railroad Company which succeeded to all the rights and obligations of the consolidating companies. On April 1, 1873 the New York and Harlem leased its railroad to the New York Central and Hudson River Railroad Company, now the New York Central Railroad Company, for a term of 401 years under an indenture providing:

"First. The said party of the first part hereby demises and leases unto the said party of the second part, its successors and assigns, the said railroad of the said party of the first part, extending from Forty-second Street, in the City of New York, to Chatham Four Corners, as aforesaid; * * * subject, however, to the provisions of a certain contract with The New York and New Haven Railroad Company, hereinafter mentioned;

"Ninth. The said party of the first part having, under date of March 17, 1848, entered into an agreement and contract of transportation with The New York and New Haven Railroad Company, by which that company acquired, upon the conditions therein named, certain rights upon and to use the tracks and certain of the property and premises of the said party of the first part—which said contract, as modified, from time to time, under the provisions thereof has been succeeded to by the New York,

18 New Haven and Hartford Railroad Company—it is covenanted and agreed by the said party of the first part that it will, and it does hereby specifically assign and transfer the said contract to the said party of the second part, with all the reservations, rents, revenues, uses, benefits and profits to be derived or received from or under it.

"But it is expressly covenanted and agreed by the said party of the first part, that so far as the provisions of the said contract grants to the said The New York and New Haven (now The New York, New Haven and Hartford) Railroad Company any rights upon, or to use the track or appurtenances of the railroad of the said party of the first part operated by horse-power aforesaid, all covenants and agreements in relation thereto shall continue to be kept and

performed, as heretofore, by it the said party of the first part, as one of the general considerations of this contract.

"And the said party of the second part covenants and agrees that it will carry out, fulfill and perform each and every of the conditions in said contract with the said The New York and New Haven Railroad Company, imposed upon the said party of the first part, so far as they relate to or are connected with the railroad or property that is hereby demised, or that are therein, in that respect, agreed by the said party of the first part to be kept, fulfilled or performed."

B. The Title of the Carrier in That Part of the Grand Central Terminal Property not Covered by the Contract and Statute of 1848.

On November 1, 1872 the New York Central and Hudson River Railroad Company and the New York and Harlem Railroad Company and the New York and New Haven Railroad Company entered into a tripartite lease whereby the New York and Harlem as owner of the property was to construct the original Grand Central Depot at Forty-second Street and lease it to the New York Central and the New York and New Haven for the joint use and occupation of all three companies. The rights of the New York and New Haven were to continue during the term of its charter, which under the laws of Connecticut was perpetual. The New York and New Haven was consolidated into The New York, New Haven and Hartford Railroad Company on August 6, 1872 and the latter thereupon succeeded to all of its rights and obligations.

On April 1, 1873 the New York and Harlem leased
19 its railroad to the New York Central for 401 years.

The lease preserved the rights of the New York, New Haven & Hartford under the tripartite agreement in the following language:

"Tenth. The said party of the first part having, under date of November 1st, 1872, entered into a lease (commonly called the 'Tripartite Lease') with The New York, New Haven and Hartford Railroad Company and The New York Central and Hudson River Railroad Company (the said party of the second part), leasing to the said companies re-

spectively, certain parts of the depot of the said party of the first part, situate on Forty-second street and Fourth avenue, in the city of New York, and commonly known as the 'Grand Central Depot', together with certain uses of grounds, tracks, buildings and appurtenances connected with the said Depot and the other premises of the said party of the first part, as will by reference to the said lease more fully appear, the said party of the first part covenants and agrees that it will, and it does, hereby specifically, assign and transfer to the said party of the second part the said 'Tripartite Lease', and all the reservations, rents, revenues, uses, benefits and profits to be derived therefrom or thereunder.

"And the said party of the second part covenants and agrees that it will carry out, fulfill and perform each and every of the conditions and obligations therein imposed upon the said party of the first part, or by it agreed to be fulfilled and performed."

Upon the construction of the present Grand Central Terminal the New York and Harlem, the New York Central and the New York, New Haven & Hartford entered into an agreement dated July 24, 1907. This agreement recited that

"Whereas, the trains of the New Haven Company enter the City of New York upon and over the tracks of the Harlem Company, under and pursuant to a certain contract, dated the 17th day of March, 1848, made by and between the Harlem Company and the New York and New Haven Railroad Company (the predecessor of the New Haven Company); and

"Whereas, the Central Company is the lessee of the entire steam railroad property of the Harlem Company, including the Grand Central Depot, in the City of New York, under a lease dated the first day of April, 1873, for a term which will expire on the first day of April, 2274, subject to the provisions of said contract of March 17th, 1848; and

"Whereas, the Central Company (for itself and the Harlem Company) and the New Haven Company now use the said Grand Central Depot, under the provisions of a certain agreement known as the 'Tripartite Lease,' dated the first day of November, 1872, as modified by four agreements supplemental thereto, dated, respectively, the 31st day of

December, 1885, the 14th day of July, 1897, and the 17th day of August, 1898, and the 23d day of March, 1899, all made by and between the parties hereto; and

"Whereas, in and by the said lease dated the first day of April, 1873, the Harlem Company duly assigned and transferred to the Central Company the said contract dated March 17, 1848, and the said 'Tripartite Lease' dated November 1, 1872; and

"Whereas, in order to provide facilities for the proper management and conduct of the business of the Central Company (for itself and as such assignee and lessee of the Harlem Company) and of the New Haven Company, and in order to carry out the provisions of Chapter 425 of the Laws of 1903 of the State of New York (copy of said act and of the act amendatory thereof being hereto annexed) it is necessary to make certain additions and changes in and about the Grand Central Depot, the yards and tracks connected therewith, and in and in respect to certain streets and avenues in the vicinity thereof;

"Now, therefore, * * *

"3. The Central Company, acting for itself and the Harlem Company, as hereinafter authorized, in consideration of the rents hereinafter reserved to be paid by the New Haven Company, and in consideration of the covenants on the part of the New Haven Company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease unto the New Haven Company, during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven Company, the use, in common with the Central Company, subject to all the provisions of this agreement, of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic, provided, however, that the New Haven Company's right to the use thereof shall in no event exceed fifty (50) per centum of the maximum capacity of said Railroad Terminal, or of any part thereof."

and "as compensation for the premises hereby demised" the New York, New Haven & Hartford was to pay interest at 4½% per annum on the cost of construction and further "as compensation for said demised premises, and in con-

sideration hereof", a proportion of the annual expenditures for maintenance and operation.

"The method of determining the proportion of the use of said Railroad Terminal, or of any part thereof, to which each company shall be entitled and the proportions of the aforesaid payments so to be made by the New Haven Company shall be by ascertaining for the month, quarter or year in question the proportion which the use of the Railroad Terminal by the New Haven Company bears to the entire use thereof, use to be based upon the number of cars and locomotives, excepting those performing Railroad Terminal service, entering the said Railroad Terminal."

21 On November 10, 1913 a supplemental agreement between the same three companies provided for the construction and management of other buildings on the terminal property by joint action of the New York, New Haven & Hartford and the New York Central.

C. The Title of the Carrier in the Boston Terminal Company Property.

On June 9, 1896, The Boston Terminal Company was incorporated by act of the Legislature of Massachusetts

"to construct and maintain a union passenger station in the southerly part of the city of Boston, and to provide and operate adequate terminal facilities for the several railroad companies hereinafter authorized to hold the stock of said terminal company, and for the accommodiation of the public in connection therewith."

The capital stock of the corporation was fixed at $500,000 and the Boston & Albany Railroad Company, the New England Railroad Company, the Boston & Providence Railroad Corporation, the Old Colony Railroad Company and The New York, New Haven & Hartford Railroad Company were each empowered to subscribe for and hold 1/5 of such stock. The management was vested in a board of five trustees, one to be appointed by each of the railroad companies above named from its board of directors. The terminal company was authorized to raise money by issuing bonds secured by mortgages or pledges of its property. In case of foreclosure of any mortgage, if there should not be

realized a sufficient amount to pay all the outstanding bonds secured thereby the five railroad companies should be liable to pay the deficiency with interest in such proportions as may be just and equitable

"having regard to the use which they or their lessees may have respectively had of the mortgaged property,"

and the Supreme Judicial Court of Massachusetts was given jurisdiction to determine such proportions. Section 9 of the Act provided:

22 "All said railroad companies upon the completion of said station shall use the same, and the terminal facilities provided by said terminal company on the land hereinabove authorized to be taken for all of their terminal passenger business in Boston, instead of the passenger terminals now used by them, and the Supreme Judicial Court, or any Justice thereof, shall have jurisdiction in equity to enforce this provision."

Section 10 of the Act provided that the five railroad companies should pay to the terminal company for the use provided for in Section 9

"such amounts as may be necessary to pay the expenses of its corporate administration and of the maintenance and operation of said station, and of the facilities connected therewith and owned by said terminal company, including insurance and all repairs, all taxes and assessments which may be required to be paid by said terminal company, the interest upon its bonds or other obligations issued under the provisions of this act as the same shall become payable, and a dividend, not to exceed 4% per annum upon its capital stock. Each of said railroad companies shall pay for such use of said station and facilities in the proportion in which it has the use thereof."

and that the proportion of use of the several railroad companies should be fixed from time to time by agreement between them, or in case they fail to agree, by the Massachusetts Board of Railway Commissioners and that the payments made by each of the railroad companies to the terminal company under this section "shall be deemed a part of their operating expenses" and the Supreme Judicial Court or any justice thereof shall have jurisdiction to

compel the making of such payments. Section 25 provided:

"The terminal company shall pay a franchise tax to the Commonwealth upon the true market value of its capital stock, without any deduction, whatever, but its real estate required by this act to be used by said railroad companies shall be assessed to and the taxes thereon shall be paid by said railroad companies, and in the assessment of franchise taxes upon said railroad companies each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act."

Pursuant to this statute The Boston Terminal Company was incorporated and each of the five railroad companies subscribed to ⅕ of its capital stock. The New York, New Haven and Hartford having acquired the property
23 of the New England Railroad Company and being lessee of the property of the Boston and Providence Railroad Corporation and the Old Colony Railroad Company, is now with its subsidiaries, owner of 80% of said capital stock and The New York Central Railroad Company, as lessee of the Boston & Albany Railroad Company, owns the balance. The proportion of use as between the New York, New Haven and Hartford and the New York Central as of valuation date was 75% by the former and 25% by the latter.

Under the leases and agreements referred to above the Carrier has an estate in perpetuity, the legal equivalent of an estate in fee-simple, in the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street and in the Grand Central Terminal. Its right to use the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street is a perpetual franchise by virtue of the authorizing and confirmatory acts of the Legislatures of the States of New York and Connecticut. Its right to use the property of The Boston Terminal Company is a perpetual franchise by virtue of the charter of that corporation from the State of Massachusetts.

VIII.

The Carrier's Remedy.

The Interstate Commerce Act provides the Carrier with no remedy by appeal or writ of error to review the final

valuation. In confirmity with the requirements of Subdivision 4 of Section 5 of the Interstate Commerce Act the Commission on December 9, 1929 duly adopted and published its plan for the consolidation of the railroad properties of the country into a limited number of systems. The participation of the Carrier in the securities to be issued upon such consolidation is limited in certain respects to the value of its property and the final valuation thereof under Section 19 (a) will be prima facie evidence of that value. For that and other reasons there is a present and imminent danger of use of the final valuation to the prejudice of the Carrier's interests. The carrier will suffer great and irreparable injury by reason of the action of the Commission in excluding from the final valuation a most substantial and essential part of its property and is without adequate remedy therefor.

24

Wherefore the Relator prays that this honorable court issue its peremptory writ of mandamus commanding the Respondent to investigate, ascertain and report the true value of all the Carrier's property and to include therein the value of the estates and franchises of the Carrier in the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street and in the Grand Central Terminal and The Boston Terminal Company properties and for such other and further order or relief as may be necessary or proper.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY AND OTHER RELATORS,

By CHOATE, HALL & STEWART, *Boston,*
HARLEIGH H. HARTMAN,
Attorneys.

JOHN L. HALL,
Of Counsel.

STATE OF CONNECTICUT,
County of New Haven:

New Haven, June 25, 1930.

Personally appeared E. G. Buckland and J. J. Pelley being respectively the chairman of the Board of Directors and the President of The New York, New Haven and Hart-

ford Railroad Company and each of them made oath that he has read the foregoing petition and that the statements of fact therein contained are true to the best of his knowledge and belief.

Before me,

MAURICE K. DUGAN, [SEAL.]
Notary Public.

25 EXHIBIT 1.

B-1766.

Interstate Commerce Commission.

Valuation Docket No. 311.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY ET AL.

(Here follows diagram marked page 26.)

27 *Valuation Reports, Interstate Commerce Commission.*

Valuation Docket No. 311.

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY et al.[1]

Submitted June 15, 1926. Decided November 13, 1929.

Final value for rate-making purposes of the property of The New York, New Haven and Hartford Railroad Company, owned and used for common-carrier purposes, found to be $256,400,000, as of June 30, 1915, of property used but not owned $120,615,724, and of property owned but not used $3,516,650.

Arthur P. Russell, Arthur W. Blackman and *Charles E. Hughes* for New York, New Haven and Hartford Railroad Company and others.

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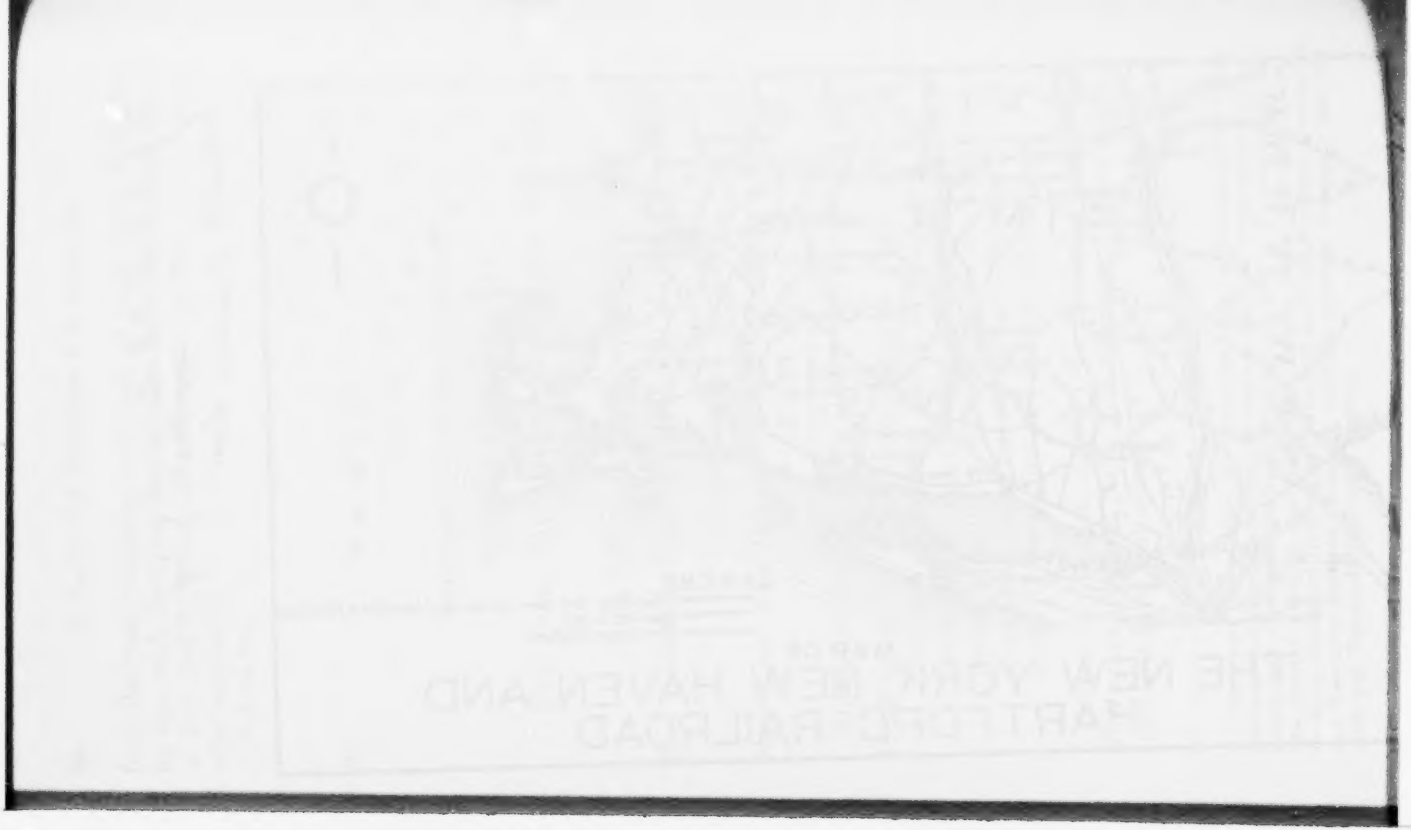
[1] *This report also includes the valuations of the properties of Old Colony Railroad Company; Boston and Providence Railroad Corporation (Mass.); Boston and Providence Railroad Corporation (R. I.); Providence, Warren and Bristol Railroad Company; The Harlem River and Port Chester Railroad Company; Holyoke and Westfield Railroad Company; Providence and Worcester Railroad Company; Chatham Railroad Company; and Norwich and Worcester Railroad Company.*

N.Y., N. H. & H. R.R. Co. et al.,
v. appellants.
Interstate Commerce Com. } Page 26.



Ralph H. Kimball for Western Union Telegraph Company.

Report of the Commission.

By the Commission:

By our order of October 24, 1922, entered in this proceeding, we completed the tentative valuation as of June 30, 1915, of the property of The New York, New Haven and Hartford Railroad Company, hereinafter called the carrier. Notices thereof were duly served upon the carrier and other interested parties in the manner and as required by law. The carrier and its subsidiary companies filed a protest within the statutory period and the Western Union Telegraph Company intervened. A hearing was held, briefs were filed, and oral arguments heard upon the issues presented by the protest.

On date of valuation the carrier operated a standard-gage railroad system situated in the States of Connecticut, Massachusetts, Rhode Island, and New York. The operated property consists of 1,966.225 miles of first main track, 1,004.656 miles of other main tracks, and 1,430.259 miles of yard tracks and sidings. Of these lines, the owned and used property consists of 1,215.067 miles of first main track, 577.816 miles of other main tracks, and 811.457
28 miles of yard tracks and sidings. A detailed description of the property of the carrier is given in the order entered herein.

Protest of the Carrier.

The protest of the carrier is directed generally against the rules, methods, and principals employed by us in the preparation of the tentative valuation and against the costs and values found for certain specific property, or our failure to report findings of such costs or values. The general objections contained in the protest are similar to those heretofore considered and overruled in previously decided cases. Our discussion in this report will be limited to those matters upon which testimony was presented at the hearing.

Original Cost to Date and Investment in Road and Equipment.

The carrier protests our omission from the tentative valuation of a finding of original cost to date and our substitution therefor of a report of outlay as represented by the costs chargeable under our accounting rules to investment in road and equipment. It contends that the amount reported as outlay is incomplete and inaccurate for the reason that it does not include all the expenditures made in constructing the properties. Among the items alleged to have been omitted are expenditures the exact amounts of which are not ascertainable from the carrier's books, although the fact that expenditures for the properties were made can be established and the amounts estimated; the costs of properties for which payments were made out of income; the value of concessions and allowances made by the carrier or its predecessor corporations in consideration of aids, gifts, grants, and donations; the expenditures made in acquiring interests in corporations owning common-carrier facilities; and many other items incident to the cost of producing the property. It contends that these costs should be reported, as they are supported by sworn statements made to public authorities of various States or by bona fide corporate records other than the accounting records of the several railroad companies here considered. The carrier protests that our conditional restatement of the investment account does not show the division between road and equipment and contends that a proper restatement would show that the amount recorded in its books as investment in road and equipment is very much understated.

The tentative valuation states that if certain readjustments were made the amount of $195,505,843.72, recorded on the carrier's books as its investment in road and equipment, would be reduced to $193,417,165.71. The carrier protests that this sum should be not less than $232,675,-

29 453.93. At the hearing it was agreed that the bureau and the carrier would examine the latter's books and stipulate for the record the result of their examination. As a result of this examination, there were placed in evidence stipulations covering numerous items with respect to which the conferees agreed. They show the facts and principles applicable and also the corrections of

the tentative valuation necessary and in accordance therewith. The conferees also prepared stipulations with respect to accounting matters in which there was agreement as to the facts but disagreement with respect to the principles which should apply. The stipulations in which there was complete agreement cover principally items which were incorrectly stated in the tentative valuation. The order entered herein will be stated so as to reflect these changes. The remainder of the stipulations contain agreed statements of fact and recite the divergent positions of the two groups of conferees with respect to the conclusions which should be drawn.

Many of the issues relate to questions with respect to the amounts which should be reported as modifications of the amounts stated on the books of the carrier as investment in road and equipment. The carrier contends that we should make a complete restatement of the investment account. It points out many charges said to have been made to operating expenses, which, under our accounting rules, effective in 1914, would have been charged to investment. It urges that for such of these charges as were chargeable only in part to investment an estimate should be made of that amount and the readjustment made accordingly. It states that the estimates which are the basis of the amounts for which it contends are conservative and will not result in an overstatement of the readjusted account. When addition-and-betterment work involves property retirements, or work classifiable as maintenance, it is true that the division of the total cost between investment and operating expenses must be, to some extent, based upon estimates. However, these estimates, to have any value from an accounting standpoint, must be made at the time the work is done by some one who exercises supervisory charge thereof or has knowledge of the conditions under which it is done. The estimates upon which the carrier now relies in support of its claim are of an entirely different character. They were prepared at some time subsequent to date of valuation and relate to transactions that occurred from 8 to 48 years prior thereto and were made in part by employees and others who had no personal knowledge of the conditions under which the actual work was done, but were compelled to rely upon their opinions, beliefs, recollections, and assumptions. The evidence with respect to two items included in the car-

rier's total claim, one of $241,261.05 for increased weight of rail, and one of $141,000 for betterments involved in the installation of banjo signals on the Hartford division, are cited as examples of the foregoing. The first amount is wholly estimated. The carrier does not give reference to any record in support of its claim, but relies on the recollection and opinion of a section foreman in determining when and to what extent the weights of rail at numerous places on its road were changed. The second amount, for installation of banjo signals, is claimed to have been expended during the period 1888-1901. The cost is not known. The claim is based on the amount that was credited to the investment account when the signals were renewed at some later date, not given. The carrier's support of this claim is found in the recollections of employees who were engaged in maintenance work on the division on which these signals are located or had general supervision of such work on the road between 1886 and 1901. It was their best recollection that the expense was charged to operating expense and none of it to the investment account.

The sum which the carrier contends should be added to its own recorded investment in road is $12,630,733.52, and to those of its lessor companies $473,403.85. These sums are the totals of expenditures said to have been for additions and betterments. The stipulations also show that the carrier's books indicate that prior to 1907 it charged to operation, income, and profit and loss, amounts totaling $369,305.98 which represented expenditures for land. These expenditures were made for purchases between 1875 and 1914, the greater part having been made prior to 1905. It contends that this sum should be added to the investment account. The record does not show why these charges were made to accounts other than investment at the time when made, nor is it known whether or not any of them were later charged to the investment account as recorded in the books of the carrier on date of valuation. We are not convinced that any change should be made in the tentative valuation for these amounts. *Chicago, Burlington & Quincy R. R. Co.*, 134 I. C. C. 1, 10, *Kansas City T. Ry. Co.*, 25 Val. Rep. 82.

The carrier's books show that certain assessments for public improvement were charged to operating expenses and income to a total of $106,227.73. The carrier contends that these assessments were properly chargeable to invest-

ment under the 1914 classification of accounts and therefore that this sum should be included in the conditionally readjusted investment account. The record does not show whether these assessments were for the initial improvements to the property which benefited thereby, or were paid for renewals, as indicated by charging them to operating expenses. Since such assessments for initial improvements only may be charged to investment under our rules, no change will be made.

31 The carrier contends that certain roadway machinery valued at $22,728 was in service on date of valuation and was reported by it in its return of cost of equipment in compliance with our order. Of this sum, $16,988 was the total of recorded expenditures and $5,740 the result of estimates. This equipment comprises numerous small units purchased during the period 1880 to 1914 and generally charged to maintenance expenses. Some portion or even all of this property may well have replaced other property already charged to investment in road and equipment. We are not convinced by the record that this sum should be included in the amount reported as the conditionally readjusted investment.

The carrier contends that its account for investment in equipment is understated by $15,963,472.55, which is the excess of the original cost of equipment as reported to us by the carrier and verified by the bureau, plus the cost of additional equipment claimed to have been in service at date of valuation but not inventoried, over the recorded book investment in equipment as determined by the carrier for the purposes of this claim.

The record shows that the total of the carrier's report includes $8,677,517 of estimated costs, or 10.40 per cent of the total. To this total amount the carrier has added $77,356 for equipment not inventoried. The claim is based on the excess of a total amount obtained in this manner over the book investment in equipment. This latter factor in the comparison is unreliable. The amount recorded in the books as the cost of equipment is found not to include all the costs. The record frequently fails to show the separate cost of equipment obtained in the acquisition of other railroads. In some instances the carrier has attempted to adjust this discrepancy by more or less arbitrary divisions, none of which is exact. Prior to July 1, 1914, the entries

made in the books of the carrier with respect to units of equipment retired were on the basis of replacement cost instead of the original amount charged thereto, which makes the recorded investment out of agreement with our uniform accounting rules in effect since that date and used by us as a uniform standard of investment in road and equipment. Since the amount claimed by the carrier to be the total cost of equipment is not exact for the reason that it contains estimated costs and cost of equipment not inventoried, and since the recorded book value of equipment included in the investment in road and equipment account is less than it should be, for the reasons above stated, the claim of the carrier, which is based on a comparison of the two amounts established in this manner, can not be accepted as proof. The carrier's contention that this sum should be included in the conditionally restated investment is overruled.

32 The carrier contends that, due to certain adjustments of its accounts made in 1904 and 1907, $6,523,823.85 was erroneously deducted from its investment in road. It alleges that this sum represents an arbitrary reduction in its investment in road improperly made in connection with an inventory adjustment of the recorded investment in equipment. These adjustments were made on the basis of the equipment appraisals made at that time. We are not convinced that the carrier's engineers and accountants are better advised at this later date than were those who made the adjustments during 1904 and 1907. No changes will be made in these entries.

The foregoing items, totaling $35,616,291.63, for which the carrier contends adjustments in its investment account should be made, and which contention we have denied, have been considered in the light of our previous decisions wherein we have discussed and considered the difficulties encountered when the bureau attempted to reconstruct the carriers' accounts. Where the records are available it is possible to restate the investment account in accordance with the 1914 classification, but this is not possible in numerous cases or practical in others. We state in the tentative valuation that, if certain readjustments were made in the amount of the investment in road and equipment as recorded on the carrier's books, it would be increased or decreased accordingly. We do not undertake to report a

sum as the restated investment in road and equipment such as would be produced by complete data and an audit of the carrier's books and vouchers. When considering all the costs and elements which may properly be given consideration in our finding of the single-sum value we have before us only such items modifying the recorded investments as to the classification of which there is no doubt. However, the weight that may be given to the investment account as recorded on the books of the carrier or as modified by such adjustments will depend on the showing as to its reliability as made in the whole record.

The carrier contends that the statement in the tentative valuation showing the items which were found as being part of the original cost to date so far as it could be ascertained from the carrier's books should be increased by adding thereto such sums as were charged to operating expense, income or profit and loss accounts and which would have been classed as a part of the original cost under the 1914 accounting rules. These amounts and their character are somewhat similar to those heretofore discussed and considered in connection with the matter of the conditionally readjusted investment account. The record does not clear these items of substantial doubt as to whether they in fact represent expenditures chargeable to investment in road and equipment account, under our present ac-
33 counting rules, for property that did not replace other property already included in that account and that was still in common-carrier service on date of valuation. There appear to be no more substantial reasons for including these items in original cost to date than there were in the case of the restated investment. Therefore, no change will be made. A similar condition is found in the issues with respect to the statement of outlays.

The carrier protests the separate findings for the Boston and Providence Railroad Corporation in Massachusetts and the corporation of the same name in Rhode Island. The records of the Massachusetts company include most of the investment and original cost data of the Rhode Island company, and the Massachusetts company owns the entire stock of the Rhode Island Company. They are operated as one company by the carrier, as lessee. It was proposed at one time to consolidate these companies into one company. This plan was approved by the State of Rhode

Island but not by Massachusetts. The tentative valuation shows the accounting facts with respect to each company separately. We approve this method of reporting on these companies.

There are a number of stipulations wherein the issues do not go beyond the form or manner in which the facts relating to the accounts of the carrier, its predecessors or lessor companies, are stated in the tentative valuation. An example of such is that of the protest against the statement under the subject "Aids, gifts, grants of rights of way, and donations," which reads "Certain other lands have been returned which were acquired through deeds reciting nominal consideration or deeds in which no considerations were stated. For the purpose of this report these lands are considered as apparent aids. The value at the time acquired can not be determined." The carrier contends that many of the considerations which actually passed in these cases were substantial amounts and that the failure of the deed to recite the full consideration is not proof that none passed. If substantial considerations were actually paid, that fact can be shown by evidence concerning the particular transactions, but in the absence of such a showing we must conclude that the protest against the accuracy of the findings in the tentative valuation has not been sustained.

Cost of Reproduction New.

During the course of the hearing our attention was directed to a number of minor errors in the reproduction costs in the tentative valuation. The carrier and the bureau are agreed as to the corrections that should be made. These errors include, for example, the omission of motor equipment on work car No. C—4891; the prices applied to
34 ferry boat *Fairhaven* and car floats Nos. 2, 29, 31, and 33; and the omission of business car No. 200 and work car No. 152. Other changes, minor in character, not hereinafter discussed, were recommended by the bureau for the purpose of curing other errors of omission or computation. The various corrections will be made.

Grading.—The tentative valuation includes $56,217,897 for cost of reproduction new of grading. The carrier contends that this amount should be increased to $64,149,479.

A witness for the bureau, after making a review of the prices applied in the tentative valuation, recommended that the report be modified so as to include only $55,191,103 for this account.

The difference of $7,931,582 between the sum included in the tentative valuation and that urged by the carrier is due to the greater amounts of pay quantities developed by the distribution of the measured quantities for which it contends, the addition of 10 per cent shrinkage to the measured subsidence quantities, additional temporary trestles not included in the tentative valuation, and the application of higher unit prices for common and solid-rock excavation. The carrier points out that it cooperated with the bureau in the development of the pay quantities from the measured quantities and on the completion of this work had no objection to the results thus produced and reflected in the preliminary report served. It complains that these pay quantities were not all included in the tentative valuation, and that the cost of reproduction was thereby reduced $2,471,982 due to modification made in the distribution of the excavated material, and $1,434,860 by the elimination of certain temporary trestles estimated as necessary in the original distribution. It appears that upon review the pay quantities so developed and the methods used in determining them were not wholly acceptable to the officials of the bureau on whom rested the duty of making final recommendations as to prices and quantities for inclusion in the tentative valuation. The prices used in the tentative valuation were fixed after a thorough investigation and a study of grading cost data in the territory of the carrier, and it was important that the units to which they were to apply should be made comparable with the units found in the cost data used.

The distribution in the preliminary report was made on the assumption that the haul of the excavated material to the embankments would be classed as team work, contractor's train haul and haul over operated tracks. For the latter two classes of haul temporary trestles, where necessary, were assumed for making that portion of the roadbed supporting the first track. The embankment would

be widened to full width by shifting this first track
35 or spur tracks leading therefrom as required in dumping the material. In that development of the pay quantities on the carrier's line it was necessary in many instances, in order to avoid wasting material at one point and borrowing at another, to make long hauls. These long hauls, when beyond the economical haul limit of contractor's usual grading equipment, were classed as operated train hauls. However, in order to provide for this operated train haul either a roadbed or trestles for one track had to be available. Between points on the line where it was estimated that sufficient material within the team or contractor's train-haul limits would not be available to complete a roadbed for the first track, or bridges would not be in place, temporary trestles were estimated.

The carrier's contention that in the tentative valuation certain modifications were made in the amounts of pay quantities developed by the first distribution was admitted by the witness for the bureau. It appears that such refinement as was attempted in that distribution would not necessarily be resorted to in actual practice. The specifications which are a part of every contract for the construction of a railroad of substantial mileage provide usually for payment for the work as measured and classified in various units. Some provide prices to be applied to the several classes of material excavated and additional payment for the hauls made in excess of a fixed distance, others fix the limits of the work to be done and pay one price for each class of material, including all haul; and in many others variations occur, depending largely on the engineer who provided the specifications. With all these variations in the manner of payment for the construction of railroad property a study such as that made of the preliminary distribution for development of the pay quantities for grading in a reproduction of the carrier's property is not controlling. The quantities included in the tentative valuation for roadbed excavation and temporary trestles are not shown to be inadequate and are approved.

The carrier protests the omission from the tentative valuation of that quantity of common excavation representing shrinkage on subsidence. The material, alleged to amount to 691,534 cubic yards, was included with the other pay quantities in the preliminary engineering report, but was

omitted from the tentative valuation. For reasons stated in *Grand Trunk Ry. Co.*, 143 I. C. C. 1, 7, this protest is not sustained.

The carrier contends that the unit price applied to common excavation should be increased from the average of 33.2 cents per cubic yard applied in the tentative valuation to 39 cents and that for the solid rock from $1.20 to $1.36 per cubic yard. In support of its contention, the carrier put in evidence an exhibit showing the contract cost
36 of many grading projects in its territory. These data include projects from 1880 to 1915 as compiled by a committee of the New England group of railroads. In addition to this evidence, the testimony of other engineers familiar with the cost of doing grading work in the territory was given in support of the foregoing prices. A witness for the bureau testified that he had made a review of the prices applied to grading on this carrier and was of the opinion that no change should be made in the prices applied to common and loose-rock excavation, but with respect to solid rock it should be reduced from $1.20 to $1.10 per cubic yard.

The volume of grading necessary to reproduce the carrier's property averages about 60,000 cubic yards per mile. The proportions of the several classes of excavation found for the property as a whole were common excavation, 90 per cent; loose rock, 1 per cent; and solid rock, 9 per cent. The common excavation is principally sandy gravel, loam and clay, with some disintegrated rock and wet sand found often in the pockets formed by the rock saddles. The solid rock consists principally of granite (a strong, massive gneiss resembling granite), limestone, sandstone, schist, and trap. The principal main line sections of the property follow the shore of Long Island Sound, crossing numerous salt-marsh lands and bays, which tend to produce long hauls and make necessary the construction of many trestles for construction purposes. The lines more distant from the shore traverse many inland swamps and muskegs. For a period of three or four months during the winter, the weather conditions are severe enough materially to hinder railroad construction. The lines traverse a highly developed industrial section, resulting in the location of a greater proportion of the lines within city and suburban areas than is found generally on other carriers of equal mileage. The carrier

contends that the foregoing conditions account for the somewhat higher cost of railroad construction in that territory than found generally throughout the rest of the United States.

The exhibit submitted by the carrier is a compilation of the quantities of the several classes of grading excavation and the cost thereof, including haul, for all projects for railroad grading in the New England territory of which the committee could secure data. These data were plotted to show the trend of prices. The diagrams show that the average contract price in the territory for common excavation was about 30 cents from 1885 to 1900, then increased gradually to 44 cents by 1909, and decreased back to 33 cents by 1914. They show the cost of solid-rock excavation during this whole period ranged principally from $1.10 to $1.25 per cubic yard. The many varying conditions on these projects controlling the performance of the work and the various specifications which governed the manner
37 of doing the work and payment therefor, must be taken into consideration along with the bare unit-cost prices. The prices indicated by these data reflect the effect of high costs on lines in the extreme northern portion of the New England territory where, due to the location, characteristics of the materials, and the climate, the costs were somewhat higher than those in the immediate vicinity of the carrier's property. The prices which, in the opinion of witnesses for the carrier, were proper for reproduction were approximately the same as those for which the carrier contends.

In support of the recommendation that the price applied to solid-rock excavation should be reduced from $1.20 per cubic yard to $1.10, a witness for the bureau placed in evidence two exhibits, one of which shows the costs of grading throughout the country and the other the costs on numerous projects in the New England and adjoining territory. The first exhibit is principally a combination of the totals taken from exhibits offered in other valuation cases. The prices shown are for zones and not for projects. The exhibit is not applicable to this case except in a very general way. The other exhibit shows grading cost data for 18 projects in the New England States, except Maine, and in eastern New York and Pennsylvania, which have been classed as ordinary grading, and 13 projects in New England, in the

South and in the Middle West, which were classified as special or terminal grading located in the more congested areas. The opinion of the witness was that the exhibits supported unit prices of 29 cents per cubic yard for common and $1.05 for solid rock for ordinary grading, and 42 cents and $1.25, respectively, for the so-called special or city grading. He classified the carrier's common excavation as 75 per cent ordinary and 25 per cent special, resulting in a weighted price of 32.25 cents compared with the 32.5 cents, exclusive of trestles and royalty on borrow applied in the tentative valuation. For solid rock he found 86 per cent ordinary and 14 per cent special, or a weighted price of $1.078 compared with $1.20 applied in the tentative valuation.

The carrier contends that these exhibits contain many projects not comparable with the reproduction of its property. It points out that the exhibit for ordinary grading contains projects outside of its territory, the yardage of which represents over 75 per cent of the exhibit. The solid-rock prices are influenced by these foreign projects more than the common excavation. The rocks on the carrier's lines, as heretofore described, are mainly hard and comprise about 10 per cent of the total grading, whereas those on projects in the eastern part of Pennsylvania and New York are sandstone, shale, limestone, and granite, and comprise a much larger proportion of the total grading quantity on each project. On two of the Pennsylvania and New York
38 projects the total yardage is 27,225,353 cubic yards, or over 400,000 per mile, about one-half of which is solid rock. They comprise 24 contracts for work on the same carrier, on which the solid-rock prices ranged from 48 to 95 cents per cubic yard. The yardage on this exhibit, which deals with construction in the immediate vicinity of the carrier's line, comprises only about 18 per cent of the total. As summarized on the exhibit it shows an average solid-rock price of 99.7 cents per cubic yard. It is this average price that the witness accepted as support for his $1.05 for ordinary solid-rock excavation. The increase represents 5 per cent added for costs not in the contract prices.

The carrier contends that the prices derived from a consideration of the foregoing projects are not representative, as they reflect the effect of alleged unbalanced prices paid on the Southern New England Railway construction con-

tract. At the time of the hearing litigation had not been concluded with respect to the final settlement on that contract. The unit costs on that contract averaged 23.5 cents for common excavation, 63 cents for loose rock and 78.4 cents for solid rock. The solid rock is defined as being granite boulders and ledge rock of tough gneiss. One of the projects in the data is located at Hinsdale, Vt. The base prices on this project are 27 cents for common excavation, 65 cents for loose rock, and $1.25 for solid rock. These prices are exclusive of overhaul, which totaled 18.4 cents per cubic yard. The solid rock on this project is hard modified granite. The average length of overhaul is not in excess of that estimated for the reproduction of the carrier's property, but the unit price paid per station of 100 feet is 0.75 cent, which is excessive as an average for all classes of haul when compared with the prices applied therefor in the tentative valuation and which are not in issue. The proportion of solid rock in this contract was the same as that on the carrier's property. Another project is the Hampden Railroad in Massachusetts. On this project the base prices paid to the subcontractors who actually did the work are common, 25 cents; loose rock, 50 cents; and solid rock, $1.03. To these prices should be added overhaul, which averaged 17.5 cents per yard. The contracts on the last three projects considered were let during the winter of 1911-1912.

The prices on the Southern New England work are lower than the average prices produced by the other projects in this group. These latter average 34.2 cents for common, 70.6 cents for loose rock, and $1.27 for solid rock. We are of the opinion that consideration should be given the Southern New England costs in the ascertainment of prices to be applied in this valuation in ascertaining a unit price, since that project is the largest piece of work contracted for in the territory during the pricing period. The data
39 support prices for that portion of the grading which is outside the larger cities and referred to as ordinary grading, of approximately 30 cents per cubic yard for common, 50 cents for loose rock, and $1.05 for solid rock.

We pass now to a consideration of that portion of the grading which lies principally in the larger cities and referred to herein as special grading. The bureau's exhibit includes a summary of 13 cost data projects classed as

special grading. The data as summarized on the exhibit do not indicate prices which approximate those recommended. One summary of seven projects produces 45.3 cents for common and 96 cents for solid rock. The average price of 45.3 cents may reasonably be considered as support for the recommended price of 42 cents, but the price of 96 cents is less than the $1.05 which is recommended and which we find as indicated by the data for ordinary grading. Due to restrictions with respect to blasting, the cost of rock excavation in a city is usually more expensive than that outside. When the projects which are outside of the territory of the carrier are excluded there remain first, data from the carrier's line, which average 28.3 cents for common, 50 cents for loose rock, and $1.402 for solid rock; second, data from the New York, Westchester and Boston Railway, 52.8 cents for common and $1.037 for solid rock; and third, data from the New York Central Railroad, 42.2 cents for common and $1.21 for solid rock, all including overhaul. The weighted averages of these prices, including 5 per cent for miscellaneous costs, are 40.5 cents for common, 52.5 cents for loose rock, and $1.137 for solid rock. The second group constitutes 79 per cent of the total rock quantities and has the lowest price. An examination of the underlying data shows that all of the projects in this group are not city work. Three of them are lines that traverse open country, with only minor portions in contact with cities or highly improved property. When the data on the two city projects in this group are combined with the carrier's and New York Central Railroad projects, the weighted-average prices are 40.5 cents per cubic yard for common and $1.295 for solid-rock excavation. We are of the opinion that these data indicate prices for special grading of 40 cents for common, 50 cents for loose rock, and $1.30 for solid rock. The prices for ordinary and special common excavation of 30 cents and 40 cents per cubic yard, respectively, produce a composite price of 32.5 cents, which is the same as the average of the prices applied in the tentative valuation, exclusive of trestles and royalty on borrow. The prices for ordinary and special rock excavation of $1.05 and $1.30 per cubic yard, respectively, produce a composite price of $1.082 as compared with $1.20 applied in the tentative valuation and $1.10 recommended by the bureau. We find that the

prices applied to common excavation are adequate
40 and the reduction of the price of solid rock excavation from $1.20 to $1.10 per cubic yard as recommended by the bureau is supported by the record. The tentative valuation will be modified accordingly.

Tunnels and subways.—The carrier protests the amount of $2,297,468 included in the tentative valuation for cost of reproduction new of tunnels and subways in so far as it is less than $2,330,538. This difference is accounted for in backfill over tunnels which is alleged to have been omitted from the pay quantities and certain brick masonry and tunnel excavation alleged to have been improperly priced. On investigation, we find that the backfill in question is included in the tentative valuation. The bureau has reviewed the prices applied to the other items of protest and has found that the tentative valuation was in error. It recommends that it be corrected by increasing the price applied to brick masonry from $9 to $11 per cubic yard for the East Haven tunnel, or a total increase for this tunnel of $7,316 for cost of reproduction new and $5,852 for cost of reproduction less depreciation; and that for the same reason the cost of excavation for tunnels at Judd's Bridge and Hawleysville be increased from $1.20 to $4 per cubic yard. The application of this price for excavation results in an increase of $8,960 for both the cost of reproduction new and less depreciation of the Judd's bridge tunnel, and $10,050 for like costs of the Hawleysville tunnel. These corrections will be made in the tentative valuation. No other changes are required.

Bridges, trestles, and culverts.—The tentative valuation includes $35,155,074 for cost of reproduction new of bridges, trestles, and culverts on the total used property. The carrier contends that this sum should be increased to $35,249,-311. This increase is due to higher prices for concrete and excavation in caisson foundations for Shade's Ferry bridge at Fall River, Mass., totaling $17,103 for cost of reproduction new, and a claim for the inclusion of eight bridges, omitted from the tentative valuation, the total cost of which is estimated at $77,134 for reproduction new. A witness for the bureau testified that the prices applied to the concrete and excavation for the foundations of the Shade's Ferry bridge were not proper and recommended that this error be corrected by increasing the cost of reproduction new of this structure from $90,179 to $106,401, and the cost

of reproduction less depreciation from $55,021 to $64,905. These corrections are approved and the tentative valuation will be modified accordingly. The eight bridges alleged to have been erroneously omitted were in some instances paid for by private parties and in others by municipalities. The testimony of the witness for the carrier was principally a statement of the claim followed by argument. The contracts under which these structures were con-
41 structed were not submitted nor was the interest of the carrier in each structure on date of valuation otherwise shown. In the absence of such essential facts no change will be made.

The bureau recommends that the unit prices applied in the tentative valuation to steel in bridges be modified. These changes would reduce the cost of reproduction new of the bridges in both this account and that of crossings and signs $1,245,129. In support of this recommendation a witness for the bureau introduced an exhibit showing how the proposed prices were ascertained from data submitted by the principal carriers throughout the country showing the cost to them of the bridges erected on their properties during the period 1905 to 1914, inclusive. The prices tabulated are for the 1910 to 1914 period, except those for cost of erection, which are for the period 1905 to 1914, inclusive, and were prepared to show what would have been the average cost of the several kinds of bridge structures had they been fabricated in Pittsburgh, the principal manufacturing and pricing center for structural steel. The points at which the fabricated steel structures were purchased and the costs of which are made the basic data for determining the Pittsburgh prices are 47 in number, the most western being Vancouver, Wash., most eastern, East Cambridge, Mass., and most southern, Houston, Tex. Only about 4 per cent of the total amount of steel for which cost data were included in this exhibit was actually fabricated at Pittsburgh and less than 50 per cent of the total at points east thereof or in the purchasing area of the New England carriers. The equivalent Pittsburgh price for each purchase at outside points was obtained by deducting from the price paid by the purchaser the freight from Pittsburgh to the point where fabricated. The recommended changes in unit prices per pound are as follows:

	Unit prices in tentative valuation.	Unit price recommended by the bureau.
I beams	$0.0375	$0.032
Deck-plate girders	.0375	.033
Through-plate girders	.0385	.035
Trusses	.0425	.039
Bascule bridges	.0430	.052
Girder swing bridges	.0375–.0385	.039
Truss swing bridges	.0425	.040
Hinged-lift bridges	.0375	.052
Deck-plate girder viaducts	.0380	.0325
Trough floor-plate girders	.0385	.034
Steel arches, trough floor	.0425	.039

The carrier contends that it did not protest the amount included in the tentative valuation for bridge steel,
42 for the reason that it considered the prices applied to this material substantially correct. It urges that these prices were determined by the bureau after a study of the costs in the New England territory and the conditions which prevailed along the carrier's road and after a consideration of the prices paid by the carriers in that territory and their relation to the prices paid for similar material throughout the United States. It argues that the evidence is not sufficient to justify discarding these prices and substituting therefor the prices in this recommendation. The carrier did not present evidence that the prices recommended were inadequate, nor did it show that the costs to it and other carriers in its territory were materially higher than the prices indicated in the exhibit. The carrier states that it does not object to this method of computing the theoretical Pittsburgh base price, if taken from proper data, and if proper methods are used in building back into a total the average prices for a particular territory. The manner of obtaining the Pittsburgh price and the price to the carrier is attacked as not having the proper freight adjustment. It cites an example taken from the exhibit as follows:

Deck-plate girders—	Cents per pound
The price reported as paid at Trenton, N. J.	2.26
Local freight from Pittsburgh to Trenton	.16
Theoretical price f. o. b. Pittsburgh	2.10
Through freight from Pittsburgh to points on carrier	.18
F. o. b. points on carrier	2.28

This leaves only 2 cents per 100 pounds difference in price at Trenton, N. J., and points on the carrier's line, although the freight was actually 16.5 cents per 100 pounds between these points. It contends that this results in a price which is 14.5 cents per 100 pounds lower than it should be. This is an extreme example of the error complained of. We find on testing the average prices obtained by this method with those computed by using the f. o. b. points reported by the carriers in their returns to our order, from which the data for this exhibit were taken, that the average error is very small. The error in the freight adjustment represents only a small portion of the amount included in the price applied for miscellaneous costs. We have also tested these prices as derived from the exhibit as a whole and those produced from that portion of the data in the exhibit for Pittsburgh and points east thereof, and find no substantial difference. This supports the recommended prices and meets the carrier's contention that the prices which prevail in its territory during the pricing period should be applied. The exhibit indicates that the
43 prices paid, when adjusted to the common point, show wide variations from the average and it is probable that the prices paid in some sections of the country would not agree with those for the whole country. However, in the instant case, the prices indicated by the exhibit are fairly representative of those in the territory of the carrier and they are approved. The prices included for cost of erection have been taken from projects during the 10-year period ended in 1914, and the prices obtained for the material from the 5 years ended in 1914. The 10-year period was used in the study of erection costs due to the scarcity of cost data, but from such as are available it appears that the average cost of erecting steel during the period 1905-1909 was not substantially different from that during the pricing period 1910-1914. The carrier contends that the prices for erection which were supported by the exhibit and the testimony made no provision for the trend in labor costs. It does not necessarily follow that the costs of erection during this period would reflect any trend in labor costs. We find that the average prices developed for the first five years of this period are not substantially different from those for the last five years for this class

of work in the territory of the carriers as indicated by the underlying cost data. This situation is not different from that met in other accounts where the total cost is largely taken from contract costs. The prices of steel in place in the tentative valuation will be modified in accordance with the recommendation.

Ballast.—The carrier protests that the 10 per cent added to the measured quantity of ballast for shrinkage is insufficient and should be not less than 15 per cent. Its ballast is about 80 per cent gravel, 5 per cent cinders, and 15 per cent stone. Its witness testified that tests made by placing a measured amount of gravel ballast in a box and subjecting it to tamping resulted in a showing of 17 to 22 per cent shrinkage. Similar tests made of gravel and stone developed 20.8 and 17.7 per cent, respectively. Another witness testified that tests made for shrinkage of trap rock indicated 16.25 to 17.5 per cent. Such tests may serve to indicate the amount of shrinkage reasonably to be expected under conditions where the material is confined and subjected to tamping throughou the whole amount under test, but these conditions do not exist in the ballast as measured in the track. Only a portion of it has been subjected to tamping and to compression by the moving trainloads which pass over it. For the average ballast section, the greater portion of the ballast in place is not subject to such tamping and compression but lies loose between the ties and on the shoulders of the section. In adding to the measured ballast an amount equal to 10 per cent for
44 shrinkage, consideration was given to the various kinds and grades of ballast materials and the varying conditions under which they were put in place and treated thereafter. We are convinced in this case that the 10 per cent added to all the measured ballast on this property is adequate.

At the hearing the bureau recommended that the prices for cinder ballast, including haul, be increased as follows: On the carrier, from 25 cents to 27 cents, and on the Old Colony system, from 25 cents to 28 cents per cubic yard. We approve these changes and the tentative valuation will be modified accordingly.

Tracklaying and surfacing.—We have included $8,720,506 for cost of reproduction new of tracklaying and surfacing on the property used, an average of $1,980 per mile for all

tracks. The carrier contends that this amount is insufficient to the extent that it is less than $12,473,043, or an average of $2,832 per mile. The difference is attributed by it to alleged inconsistencies in our application of the prices and to the inadequacy of these prices. The inconsistencies complained of are found principally where different prices were applied to different portions of the track having the same weight of rail, although there do not appear to be any substantial differences in conditions which would affect the price. At the hearing the bureau recommended that certain changes be made in these prices which will correct the discrepancies, and increase the total cost of reproduction new for this account to $9,124,200, and the average cost per mile of track to $2,071. These changes in prices are approved.

In support of the higher unit prices for which the carrier contends it introduced in evidence an exhibit similar to that which we had before us in *New York, Philadelphia & Norfolk R. R. Co.*, 97 I. C. C., 273 290, designated as formula F. However, in the carrier's exhibit the labor was based on a rate of 17.5 cents per hour instead of 15 cents used in formula F. We have heretofore rejected formula F as not affording a reliable guide in determining the proper prices for reproduction of tracklaying and surfacing. Two of the carrier's witnesses testified in support of the prices contained in its exhibit. One of these witnesses advocated prices about 10 per cent higher. The other witness cited an instance in his own experience in 1912 and 1913, when he had charge of construction for a contractor who was paid $1,000 per mile for tracklaying and surfacing of about 9 miles of new track for the Boston and Maine Railroad in New Hampshire. The total cost of this tracklaying and surfacing and placing ballast including work-train service, as estimated by him, was $2,400 per mile. This compares with $2,333 per mile for like track as determined from the data in the carrier's exhibit for an initial speed of 40 miles per hour. This contract was for a small amount of
45 track and does not appear to have been let to the lowest responsible bidder after competitive bidding with other contractors. It also included in the same price the performances of work assignable to other accounts. The $2,400 per mile stated to be the total cost of this track is said to include all costs incident to placing it in opera-

tion at train speeds up to 40 miles per hour. We have repeatedly held that an estimate of cost of reproduction should be confined to that of a track in the condition in which tracks are ordinarily turned over to operation and that it can not properly include the entire maintenance costs which go into the making of a solidified track. It thus appears that the costs on this project include more than can properly be placed in a reproduction estimate. This witness also testified that, based on his experiences as construction engineer for the carrier in 1910 to 1912, it was his opinion that the cost of such track would be $2,500 to $2,600 per mile for tracklaying and surfacing, including the placing of ballast. Of the differences between the prices applied in the tentative valuation and those urged by the carrier, he attributed from $450 to $800 per mile to insufficient amounts in our prices for consolidation of the ballast, and raising tamping, and trimming prior to commercial operation. He also directed attention to the difference between the track to which our prices apply and the track which the carrier priced. The carrier is pricing a track capable of sustaining the normal speeds as of date of valuation. We are assigning prices for new track which it would be customary to turn over as a new railroad for operation. The labor cost of maintaining a new track would be above normal for a more or less extended period following the commencement of commercial operation. However, the total maintenance costs would not be so much out of line with normal costs due to the offsetting effect of the small amount of material required during this period.

A witness for the bureau testified that the prices applied in the tentative valuation are supported by a great amount of cost data showing contract costs on numerous projects throughout the United States and in the territory of the carrier. The data were carefully analyzed, due to the variation in the proportion of work to be done under the contracts to that of the total work for which the costs were properly includible. They have been discussed in previous decided cases and need not be further considered here.

The carrier contends that the costs here under consideration are almost wholly labor costs and insists that there was a trend upward of labor rates from 1900 to 1914, and that the contract data which were placed in evidence sustain this view. The prices applied in the tentative valuation are

much in excess of these contract prices, since they provide for other elements of cost not included in the con-
46 tract prices. The showing of a trend in these base contract prices does not aid materially in arriving at the total unit costs for the property priced. We must also consider the effect on cost of other conditions, such as the greater lengths of road reproduced, as compared with the short lines for which data are in evidence. It is evident that the economy of special tracklaying equipment and trained labor gangs used on the larger projects would result in unit costs lower than where a small amount of track was constructed without these advantages. When the costs included in the carrier's price for consolidation of ballast and expenses incident to conditioning the track for higher speeds are eliminated, there is not a very material difference in the prices in issue. The carrier's contention with respect to the alleged inadequacy of the unit prices is denied.

Crossings and signs.—The tentative valuation includes $17,406,153 for cost of reproduction new of crossings and signs. The carrier contends that this sum is insufficient and should be increased to $17,787,010. The major part of this increase is accounted for as follows: $500 omitted through error; $13,068 for cost of reproduction of the bridge at Sterling Junction; and the balance through the application of a higher price per square yard for cinder and gravel road surfacing. We find that the $500 was erroneously omitted and the tentative valuation will be corrected accordingly. The bridge at Sterling Junction is a highway bridge, the cost of reproduction new of which has been estimated at $12,440. The carrier paid 55 per cent and the municipality 45 per cent of its construction cost. The carrier's portion was erroneously inventoried to the Boston and Maine Railroad. The necessary corrections will be made. The sum of $6,842 will be included as the cost of reproduction of the carrier's portion.

The carrier protests the prices of 10 cents and 15 cents per square yard applied in the tentative valuation to cinder and gravel road surfacing, respectively, and contends that 40 cents per square yard should be applied. This price is said to be supported by contract costs of gravel surfacing. These contracts were for various improvement projects during the period 1910 to 1913, inclusive. The prices varied

from 15 cents to 61 cents, the weighted average of all being 39.1 cents. This weighted-average price is influenced largely by one contract, wherein the unit cost of 17,800 square yards was 60 cents per square yard. This price was one of several unit prices which were added to an original contract as the result of a supplemental agreement between the contractor and the chief engineer. The record does not show whether or not it was the result of competitive bidding. It is for such a large quantity, and so much out of line with most of the other bids, that we are of the
47 opinion that it should not be given full weight with the other prices paid under original contracts. When this contract is eliminated the weighted average is reduced to 30.6 cents per square yard. When the extreme prices of 15, 16, 55, 60 and 61 cents are omitted, the weighted average is 29.2 cents.

A witness for the bureau testified in support of the prices applied in the tentative valuation. He relied on his exhibit showing the average cost of cinder and gravel ballast in place. These prices provided only for the cost of the material delivered and spread, whereas the road surfacing inventoried and for which the carrier contends that a higher price should be applied was rolled or solidified after spreading. We are of the opinion that the price of cinder and gravel road surfacing should be increased to 25 and 30 cents per square yard, respectively. The tentative valuation will be modified accordingly.

At the hearing the bureau recommended that certain prices which were applied in the tentative valuation to steel bridges in this account be modified. This question has been considered and disposed of heretofore in our consideration of the bridges, trestles, and culverts account. The tentative valuation will be modified to include the prices for steel bridges in this account which were there approved.

Station and office buildings.—The carrier protests the sum of $28,751,560 included in the tentative valuation for cost of reproduction new of station and office buildings. It contends that this amount should be increased to $28,964,457. This difference is due to higher unit prices for grading and track scales, an error in the summary of the property of the Boston and Providence Railroad in Massachusetts, an alleged omission of $5,275 from the cost of reproduction new of the passenger station at New London,

and the omission of a sum representing its ownership of a part interest in property at Northampton, Mass., alleged to be jointly owned with the Boston and Maine Railroad. The issue with respect to the prices applied to grading has been discussed and considered heretofore under the grading account and will not be further considered here.

The carrier contends that $45,111 should be added to the cost of reproduction new of 73 track scales. This is an increase of about 21 per cent over the total amount included in the tentative valuation. The record consists of the testimony of the carrier's witness and an exhibit showing the price contended for and that included in the tentative valuation for each of the 73 track scales. It also shows the breakdown of the cost of material, labor, and
48 overhead for the principal types of scales inventoried. These costs were not taken directly from the carrier's books but are partly recorded costs and partly estimates by the carrier as made by the employee in responsible charge of the department which installs and maintains the scales. No contract data were submitted. We are not convinced that any change should be made in the prices applied to track scales.

The carrier protests the sum of $100,000 included in the tentative valuation as the cost of reproduction new of the passenger station at New London for the reason that it is not the amount which results from the cubic feet and unit price stated in the engineering report and is less than the amount included in the preliminary engineering report. This property is jointly owned and used. When our report on the property of the other carrier jointly using it was under consideration an error in pricing this property was discovered. The correction reduced the total estimate to approximately $100,000. This sum was then assigned as its reproduction cost and placed in the engineering report on the carrier. The original units and prices should have been changed. The carrier's interest in the alleged joint property at Northampton, Mass., in the amount of $7,465, was not included in the tentative valuation for the reason that no agreement between the carrier and the Boston and Maine Railroad had been filed with us in support of such a division of ownership, nor do we find such an agreement in this record. The omission of the reproduction costs of this property from the tentative valuation is approved.

At the hearing the bureau recommended that the carrier's portion of certain jointly owned and used property in the Grand Central Terminal, New York City, be added to the property included in this account in the tentative valuation. This was an interest to the extent of 11.75 per cent in property jointly owned with the New York Central. At the oral argument the bureau moved that this recommendation be disapproved, as there was an error in the classification of the property as common carrier. It was explained that the carrier's interest therein was represented in funds advanced to the lessee for construction of buildings on the concourse which were not a part of the common-carrier property. This property will not be included in the valuation. The bureau recommended that the tentative valuation be corrected to show the carrier as joint owner with the New York Central of an express building in New York City consisting of a 7-story fireproof building, the ownership of which is 49.83 per cent in the carrier and 50.17 per cent in the New York Central, and the use 71.05 per cent by the New York Central and 28.95 per cent by the Adams Express Company. The carrier's por-
49 tion of the cost of reproduction new is $277,355 and cost of reproduction less depreciation $269,034. The tentative valuation will be modified to show this property as jointly owned but not used by the carrier.

The bureau also recommended that the cost of reproduction new of this account be reduced by $19,283 and less depreciation by $15,413, for 6 coal trestles which were improperly classified. These trestles are neither owned nor used by the carrier for common-carrier purposes. There were also 40 other coal trestles which were included as common-carrier property owned but which we find should have been reported as noncarrier property. Their cost of reproduction new totals $443,473 and cost less depreciation $275,649. The tentative valuation will be amended accordingly.

Wharves and docks.—The carrier protests the omission from the tentative valuation of a wharf at New Bedford. We find that this wharf was used by the carrier on date of valuation and should have been included with other property at that point. The tentative valuation will be modified to include for this property $5,461 for cost of reproduction new and $1,444 for cost of reproduction less

depreciation. Also, there was omitted certain pier property at Saybrook, Conn., owned by the carrier and used by the Hartford & New York Transportation Company, the cost of reproduction new of which is $8,266 and cost of reproduction less depreciation $4,595. This correction will be made. In the tentative valuation we assigned to the carrier as used but not owned certain wharf property which we have since found to have been used on date of valuation by the New Bedford, Martha's Vineyard and Nantucket Steamboat Company and the New England Steamship Company. The tentative valuation, therefore, will be corrected by the elimination of this property.

Coal and ore wharves.—The carrier protests the unit price applied to a coal pocket on Belle Dock at New Haven as not being applicable to this type of structure. A witness for the bureau testified that this structure was improperly priced in the tentative valuation and recommended that the reproduction costs be increased to $19,915 for cost of reproduction new and $16,330 for cost of reproduction less depreciation. These amounts are approved.

Telegraph and telephone lines.—The tentative valuation includes $320,100 for cost of reproduction new of telegraph and telephone lines. The carrier contends that this sum should be increased to $392,976. It agrees that the quantities inventoried are substantially correct. It alleges that owing to the absence of a detailed statement of the items in the tentative valuation it is unable to point out specifically which prices are inadequate. Its prices are the same as those ascertained by the Western Union Telegraph Company as a result of that company's investigation of the costs of such work. No cost data are in evidence in support of these prices. It has not been shown wherein these prices are better adapted to the units of property than those applied in the tentative valuation. The amount included for this account is approved.

Other expenditures, road.—The carrier protests the omission of an amount for this account. It contends that a sum not less than $11,861,862, or 5 per cent of the cost of reproduction new of the road accounts, excluding Land, should be included for these costs. It enumerates costs amounting to $9,328,444 which it allocated to this account, of which amount $5,951,505 represents items which it has considered proper to charge to other accounts. Should

we consider these items not proper to include in the other accounts, it urges that they be assigned to this account. The costs include both items of original costs paid by the public, such as the portion of costs of eliminating grade crossings, expenditures made by the carrier in changing highways, and other items of original cost not reported as part of the cost of reproduction, and items which are estimates for contingencies. At the hearing part of the evidence relating to the alleged sum which should be included in the cost of reproduction for contingencies was rejected and the carrier permitted to make an offer of proof. The public contributions, the expenses of the carrier in changing highways, and other items of original cost not reflected in the reproduction estimates must be omitted from this account for the same reasons that they are omitted from the other accounts of a reproduction estimate. Our decision to omit them does not turn on the question of whether they are properly includible in a particular account but on the broader question whether they are properly includible in any account. In previously decided cases we have fully reviewed the reasons which have led us to the conclusions that, in view of the manner in which our reproduction estimates are prepared, no specific addition for contingencies is necessary. The protest is overruled.

Power-plant machinery.—The carrier protests the omission from the cost of reproduction of property used of certain power-plant machinery owned by The Connecticut Company and located in what is known as Stamford Electric Plant No. 2, the reproduction cost new of which is alleged to be $12,331. This property was omitted from the tentative valuation for the reason that the agreement with respect to its ownership and use was signed by the carrier and owning company December 23, 1915, or subsequent to date of valuation. It appears, however, that it was being used by the carrier on date of valuation and the use was substantially the same as that specified in the agreement.

We find that 90 per cent of this property was used
51 for common-carrier purposes and that this percentage of the cost of its reproduction should have been included in the amount reported for property used but not owned. The order entered herein will include $10,267 for cost of reproduction new and $4,346 for cost of reproduction less depreciation of this machinery as property used but not owned.

Freight-train cars.—The tentative valuation includes $35,660,323 for cost of reproduction new of freight-train cars. The carrier contends that this amount should be increased to $36,847,973. This sum results from the application of higher unit prices to 60,000-pound capacity steel-underframe box cars, higher unit prices to certain caboose cars, and an amount for the equipment on the caboose cars. About 63 per cent of the total amount included in the tentative valuation for cost of reproduction new of freight-train cars is represented in the cost of reproduction of 22,379 of the 60,000-pound capacity steel-underframe box cars, priced at $1,000 per car. The carrier contends that the unit price applied to these cars should be increased to $1,050 per car. In support of this price its witness introduced an exhibit showing the cost to the carrier of 14,344 cars of this type during the period 1904 to 1912, inclusive. Their weighted-average cost was $1,108 per car. The cost of the 3,979 cars shown on this exhibit as purchased during the pricing period averages $1,045 per car. However, when only the 1,194 cars are considered for which the contracts were let during the pricing period, the average cost is reduced to $991 per car. The carrier contends that its price is further supported by the purchases in 1912 by the Central New England Railroad, one of its subsidiary companies, of 1,000 cars. These cars were built to the carrier's specifications, 900 being side-door and costing $1,025 each, and 100, having end doors, at $1,055 each.

The unit price of $1,000 per car applied to these 60,000-pound capacity cars in the tentative valuation was supported by costs of some of these particular cars and of similar cars on lines of other carriers in the territory, which were contracted for during the pricing period. A total of 6,376 such cars cost from $1,049 in 1910 to $845 in 1914, or a weighted average of $995 per car. The price applied in the tentative valuation is approved.

The carrier protests the price of $1,150 each, applied to 50 eight-wheel, steel-underframe caboose cars, 24 feet long. Its witness testified that these cars were built in the carrier's shops at a net cost of $1,677 each and that a builder's profit of 10 per cent should be added thereto, making the unit price which would have to be paid a contractor $1,845 per car. The details underlying the average cost of $1,677 per unit were not submitted by the carrier at the hearing,

nor were they furnished to the bureau for its con-
52 sideration. It appears, however, that about $300 of this amount represents the carrier's estimate of the overhead costs. The evidence is insufficient to warrant any change.

The carrier contends that $100 should be added to the price applied to all caboose cars to provide for the reproduction costs of tools, appurtenances, furniture, and fixtures which are included with each car when it is put in service. The witness for the bureau testified that the prices applied to caboose cars include this equipment, as it is customary for such equipment to be provided with new cars. The carrier did not submit cost data in support of its contention that the prices applied in the tentative valuation were insufficient to include this equipment. The amount included in the tentative valuation for caboose cars is approved.

Passenger-train cars.—The carrier protests the omission from the tentative valuation of 49 passenger-train cars alleged to have been owned and used by it on date of valuation. It estimates their cost of reproduction new to be $281,010. These cars were omitted for the reason that they were not reported by the carrier as being in common-carrier service on date of valuation. The record shows that 32 of these cars were condemned before the date of valuation and the balance were either condemned following that date, or were sold, or converted and placed in other service. It has not been shown that any of them were in service on the date of valuation. The omission of these 49 passenger cars from the reproduction costs is approved.

Motor equipment of cars.—The tentative valuation includes $719,690 for cost of reproduction new of motor equipment of cars. The carrier contends that this sum is insufficient and should be increased to $747,490. This higher amount is supported by an estimate of its witness and his opinion that the original cost of this property is the best measure of its cost of reproduction new. This estimate includes cost of lighting equipment. A witness for the bureau testified that the cost of the lighting equipment accounted for the difference. The cost of this equipment is chargeable to the passenger-train cars account. His review of that account led him to conclude that as a whole the prices applied to passenger-train cars were sufficient

to provide for the cost of the lighting equipment. No change will be made in respect to this equipment.

Floating equipment.—The tentative valuation includes $3,150,300 for cost of reproduction new of floating equipment. The carrier contends that this sum should be not less than $3,913,127. This equipment comprises 74 units, which were constructed during the period 1880 to 1913, inclusive. With the exception of a passenger ferry boat and a derrick scow, these units are either tug boats, transfers, or car floats. The carrier has estimated the reproduction prices by applying to the original cost of each unit a factor alleged to represent the ratio of change in its construction cost between the year built and 1914 as indicated by the curves platted from data compiled under the direction of the presidents' conference committee. It was the opinion of the carrier's witness that the use of this method of estimating unit prices for this equipment was proper.

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These cost data and curves which were assembled by the committee consist principally of the estimates of costs of construction for each year from 1880 to 1921. They were before us in *New York, Philadelphia & Norfolk R. R. Co., supra,* 304, and were there discussed and considered, and our reasons stated for not approving their application in that case. Numerous diagrams are in evidence in this case, prepared by the carrier and purporting to support the application of these trend curves. These diagrams show the trend curves and also have platted thereon the prices paid during different years for units of the same type. The costs of these units indicate an upward trend substantially the same as the general trend of the curves. However, those units which were constructed during the later years are of greater dimensions, gross tonnage, and rated capacity than those of earlier dates, which accounts for the greater portion, if not all, of the increased costs. No detailed estimates based on actual costs of similar units to other carriers during the pricing period were submitted. We are not convinced by the record that the cost of reproduction new of the carrier's floating equipment obtained by the use of the trend curves would produce costs which would be more representative of what the carrier would have had to pay during the pricing period than the amounts included in the tentative valuation.

The prices applied to each unit in the tentative valuation were, as far as the data were available, or reported by the carrier, equivalent to the original cost to date of valuation. This method of pricing floating equipment was followed by us after careful consideration of the prices paid by the carrier and by other parties for similar equipment. We have approved this method in other valuation cases heretofore decided and find no reason in the record now before us to disapprove or modify its application in this case.

Work equipment.—The carrier protests the sum of $1,286,455 included in the tentative valuation for cost of reproduction new of work equipment and contends that this amount should be increased to $2,855,852. The carrier has estimated the cost of reproduction new on the basis of new units, whereas the cost which has been included in the tentative valuation is on the basis of secondhand or rebuilding costs for those units which were not new when placed in the service in which they were found on
54 date of valuation. This method of pricing such property has been approved by us in numerous decided cases.

There are 1,434 units of work equipment and the carrier contends that the price applied in the tentative valuation to each unit is insufficient and should be increased by a substantial amount, as set out in detail in its protest. At the hearing a witness for the bureau recommended certain changes in the tentative prices applied to the property in this account. The net result of these recommendations is to increase the cost of reproduction new, including the property omitted, from $1,286,455 to $1,438,855, and for cost of reproduction less depreciation from $760,424 to $956,420. The most substantial changes are in the unit prices applied to work cars of the coach type. There are 378 units of this class, which were priced in the tentative valuation at $450 to $800 each for cost of reproduction new. The price recommended for all these units is $1,090 each and the average price for cost of reproduction less depreciation is $850.20 each. The amount of $884,487, however, is $71,933 less than it should be, since nothing was included for the scrap value of the units in ascertaining the per cent of cost new from the condition percentage on the foregoing coach-type work cars.

The carrier directs our attention to the depreciation applied in the tentative valuation to its wrecking crane No. 29. This crane was priced at $4,000 new and $2,332 less depreciation. It was purchased secondhand from another carrier about seven months previous to date of valuation. The crane was built new in 1901 and in estimating the depreciation we took into consideration its total age rather than its age in the present service. This was improper, as a secondhand price was used in determining the cost of reproduction new. The recommendation provides for the correction of this error by increasing the cost of reproduction less depreciation to $3,920. This amount is approved.

The 299 ballast cars which we priced tentatively at $920 each are included in the recommendation at $878 each. This price was recommended after a further review of the applicable cost data. No change was recommended in the per cent of cost new used in obtaining the cost less depreciation of these units as stated in the tentative valuation.

Work cars of the box type were priced tentatively at $350, $400, and $450 each. An average price of $300 is recommended for each of the 459 cars of this kind. This will reduce the cost of reproduction new for these units $49,050, and less depreciation $20,592. Also, it is recommended that the 68 work cars of the coal-car type, priced tentatively at $350, $400, and $450, be reduced to $250 each, and 28 work cars of the flat type, priced at $250 and
55 $300, be reduced to $225 each. These changes in prices of the coal and flat type cars will reduce the cost of reproduction new $13,725 and less depreciation $4,675. The cost of reproduction new of 69 cinder cars is decreased from $25,025, stated in the tentative valuation, to $24,840, and cost less depreciation increased from $13,996 to $20,120. The unit price applied to two steam shovels has been increased from $9,830 each to $10,462, which was the price paid for them in 1913, and the cost less depreciation modified accordingly. For seven pay cars the cost of reproduction less depreciation is increased from $2,940 for the total, to $8,540. Also, minor changes in the prices applied to other work equipment are recommended. The carrier offered no specific objection to these recommended changes. It insists that the higher reproduction prices which were proper in the opinion of its witness should be

applied. These prices are applicable to new equipment and do not represent costs of rebuilt or converted units on entering the cycle of use in which they were inventoried. The recommended changes are approved.

General expenditures.—The carrier contends that for general expenditures, excluding interest during construction, an increase should be made from 1.5 per cent of the road accounts, excluding Land, to 4.54 per cent. We have included $3,393,906 in the tentative valuation for the cost of reproduction of items chargeable to this account as compared with $11,809,623 which the carrier asks. Its support therefore was based solely on the opinions of its witnesses. No data with respect to actual cost of the items of expense assignable to these accounts were submitted. We have heretofore stated that general expenditures should be determined by the application of a percentage to the roadway accounts, exclusive of Land, which depends upon the circumstances surrounding the reproduction of the line concerned. We are not convinced that any change should be made in the percentage used in the tentative valuation.

Interest during construction.—The carrier protests the amount of $22,247,944 included in the tentative valuation for interest during construction and contends that it should be not less than $50,039,276. About one-half of the latter sum represents an estimate of the interest on the investment in lands during the construction period. We have uniformly held in previously decided valuation cases that nothing should be included in our estimate of the reproduction costs for interest on expenditures for lands. We adhere to that conclusion.

The carrier protested the construction periods estimated for some of the properties which comprise the system but offered no substantial evidence with respect thereto. In the tentative valuation we estimated 36 months for the carrier's owned property in Connecticut and 24 months for its property in the other States. At the hearing a
56 witness for the bureau testified that a review of the construction periods had been made and it was found that the 36 months' period was intended for the whole of the carrier's owned property but, through an error, 24 months had been used as the basis of computing interest on its property outside the State of Connecticut. He recommended a new schedule of construction periods for prac-

tically all of the system. The net result of the application of these recommended construction periods would be to increase the amount for interest during construction so far as affected by the length of the construction period, by about 13 per cent. The periods estimated for the carrier's owned property on two valuation sections and the unallocated property are reduced to 6 months, and those on the balance of the owned property range from 30 months to 42 months. The periods estimated for the property used but not owned range from 6 months to 36 months for the various valuation sections. The average of the periods recommended is not substantially different from that of the periods for which the carrier contends. The tentative valuation will be modified by including interest during construction on the basis of the construction periods recommended.

Track used by the Boston and Maine Railroad.—Between North Acton and Concord Junction, Mass., a distance of 4.06 miles, the Old Colony Railroad owns a double-track railroad. This property is included in the tentative valuation as used by the carrier. It appears that on date of valuation the Boston and Maine Railroad was the lessee and sole user of one of these main tracks. The tentative valuation, therefore, will be corrected to show the property in this track as owned by the Old Colony Railroad and leased to the Boston and Maine Railroad.

Rights in Public Domain.

The carrier leases from the city of New York certain pier property consisting of land, bulkheads, pier structures, sheds, and shed privileges, for which it pays annual rentals aggregating $130,418.45. It contends that this property had a value on date of valuation of not less than $2,423,773, determined by the capitalization of the rentals at 6 per cent. This amount it would have us include as the value of rights in public domain, to which we attached no present value in our tentative valuation. The record does not disclose any separate proportions of the rentals allocable to land, structures, and bulkhead of wharfage rights. No evidence of reproduction costs of structures or other costs were submitted. We have heretofore held in respect to similar property under lease from a city that the rentals

should not be capitalized and the resulting amount included in the valuation, but that the amount of rental paid
57 should be included in net railway operating income so far as the property is used in common-carrier service. We so hold here. *Central R. Co. of N. J.*, 149 I. C. C. 659, 698.

Many of the structures on these wharves and docks which were leased by the city of New York to the carrier were constructed and paid for by the carrier but were to become the property of the city of New York at the termination of the lease in each instance. Their reproduction costs were included in the tentative valuation as property owned by the city of New York and used by the carrier. These amounts were $685,050 for cost of reproduction new and $618,500 for cost of reproduction less depreciation. In *Central R. Co., of N. J., supra,* we held that the cost of structures similar to these, constructed on public domain under leases for a term of years and which were to become the property of the lessor at the end of the term, should be amortized and the unexpired portion included in the value of rights in public domain. The carrier has submitted cost data from its accounting records for the structures which it placed on these leased parcels so far as it has been able to find the information in its records. The unamortized portions of these costs amount to $299,314. In the absence of better evidence, we will include this sum as the value of rights in public domain and eliminate from the tentative valuation the reproduction costs which we included for these structures.

Terminal Property at New York City.

The carrier protests the omissions from the tentative valuation of the value alleged to be assignable to it of the property used as a terminal station in the city of New York; the approach to that terminal between Woodlawn Junction and the Grand Central Terminal yard, including the coach yard at Mott Haven, and the power line, transmission, and distribution system within that territory. It contends that the value of the rights in perpetuity to the use of this property is $55,490,531. This sum is the total of the several portions of the property based on their al-

leged total values and proportion of the use of each on date of valuation, as follows:

	Per cent of use for year ended June 30, 1915	
Grand Central Terminal	41.93	$39,664,068
Fifty-ninth Street to Mott Haven	41.93	8,820,835
Mott Haven to Woodlawn	62.95	4,849,762
Mott Haven yard	43.74	1,276,279
Distribution system	24.00	879,587
Total		$55,490,531

58 At the hearing evidence was introduced by the carrier to show the method by which these values were ascertained. Also, copies of the several agreements and legislative acts relating to the joint use of the property are in the record. In its application of the foregoing factors of use, the carrier does not concede that the resulting sums are necessarily the limit of the value of the use. In the case of the Grand Central Terminal property, the agreement provides that the proportion of use in the carrier may not exceed 50 per cent of the total property jointly used.

The right to the use of the tracks south from Woodlawn Junction was acquired from the New York and Harlem Railroad Company by The New York and New Haven Railroad Company, predecessor of the carrier, by an agreement dated March 17, 1848. The right of the New York and New Haven Railroad to construct its line from the Connecticut-New York State line to William's Bridge, which point is just south of Woodlawn Junction, was authorized by an act of the New York Legislature on May 11, 1846, and the charter of the New York and Harlem Railroad was amended by the legislature March 29, 1848, to permit the New York and New Haven Railroad to operate its trains over the tracks of the New York and Harlem Railroad Company "upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies." The agreement provides that it shall continue in force and be binding on both companies during the terms of their charters and for all renewals thereof, but either company may terminate the covenant for compensation after three years upon giving one year's notice to the other

company. However, this could not terminate the contract, as it was provided that new covenants should be agreed to or on disagreement that the questions be submitted to arbitrators, whose award would be binding on both companies. There is no defeasance clause in this agreement. The cost of maintenance of the property is to be paid by the New York and Harlem Railroad Company. The compensation for its use by the New York and New Haven Railroad is computed on the basis of a unit price per passenger; and, on express and mail matter, it is provided that for each shipment a portion of the receipts shall be retained by the New York and New Haven Railroad to pay for station costs and the balance divided with the New York and Harlem Railroad in proportion to the haul on the respective properties. The proportion of use is not limited under this agreement except so far as modified by later agreements with respect to the property used within the limits of the terminal areas. As shown above, the carrier's use of the road from Woodlawn to Mott Haven was 62.95 per cent for the year ended on date of valuation.

59 On August 6, 1872, The New York and New Haven Railroad was consolidated with the Hartford and New Haven Railroad Company under the name of New York, New Haven and Hartford Railroad Company, which thereupon succeeded to all the rights and obligations of the constituent companies. On April 1, 1873, the New York and Harlem Railroad Company leased its common-carrier property to the New York Central and Hudson River Railroad Company for the term of 401 years. This lease specifically provides that the lessee shall perform the obligations and enjoy the benefits which attach to the agreement of March 17, 1848, for use of the tracks by the carrier. The mortgage, which was executed June 1, 1897, was subject to the rights in the carrier with respect to the use of the trackage and to the rights acquired by the parties to the tripartite agreement of November 1, 1872, in which the carrier, the New York and Harlem Railroad, and the New York Central and Hudson River Railroad were the contracting parties. This latter agreement relates to the terminal station property, the issues in respect to which are hereinafter discussed and considered.

The carrier contends that it owns a perpetual easement in the railroad of the New York and Harlem Railroad Com-

pany, now a part of the New York Central Railroad system, from Woodlawn to the Grand Central Terminal, which is an interest in the property and that this interest is wholly owned and used by it. It argues that this is not an ordinary trackage right but an estate in the property. Its distinguishing characteristics are that it is perpetual, is impressed upon the property in perpetuity by the State, and is a dominant interest. The New York Legislature not only conferred authority upon the New York and Harlem Railroad to enter into an agreement with the New York and New Haven Railroad, but also gave the right to the latter company to use the tracks in accordance with an agreement between the two companies. We are urged by the carrier to find a value for this right to use as a property right which is owned and used. This value, it contends, should not be less than the sum which is produced by prorating to each of the using carriers that portion of the value of the whole property which is proportional to the use.

In our finding of a value for the property used jointly under this agreement it is contended by the carrier that we should allocate a portion of it to the carrier as property owned and used. It does not limit its portion of the value to that ratio which its use of the property for the current year bears to the total use, but for the purpose here considered is not urging that it be assigned a greater proportion of the value than that represented by its use. The carrier does not contend that it made an investment in
60 the lands or improvements thereon which are thus jointly used. The value of the property owned and used which we would value to the carrier must be found in the easement or right to use. If we accept the carrier's view that this right is impressed upon the property, its value, if determined, must be carved out of the whole value for the property used which we find under the valuation act. We note that the agreement for this right begins as follows: "This agreement and contract of Transportation made and concluded this seventeenth day of March in the year one thousand eight hundred and forty eight between * * *." It is thus seen that the agreement expressly calls the contract a "contract of Transportation." It provided that the New York and New Haven Railroad, as soon as it completed its line of railroad from the New York-Connecticut State line to William's Bridge, would have the

right to operate its trains over the tracks of the New York and Harlem Railroad. It further provided that the New York and New Haven Railroad would pay to the New York and Harlem Railroad and the latter company would receive as *full compensation* a certain sum for each passenger transported by the New York and New Haven Railroad. Provision was also made for compensation for mail and express carried by a division of the revenue therefrom. It was provided that an additional track should be constructed at the expense of the New York and Harlem Railroad, which was also required to maintain the road in good and sufficient repair. There is nothing expressly stated in the agreement which gives to the carrier or its predecessor a part ownership in the property, nor is there any expression which may reasonably be construed as giving to the carrier an interest beyond that right to use on consideration of the payment of a full compensation. On the contrary, as set out above, it is expressly stated that the agreement is a contract of transportation wherein full compensation is paid for the right to use the property jointly with the owning carrier. The carrier enjoys a right of joint use of this property for which it pays a specific fee per passenger and a definite proportion of the receipts from each shipment of express or mail matter transported. The property is maintained wholly at the expense of the owning carrier. For the purpose of ascertaining the net railway operating income under section 15a of the act, the payment made for the use of the tracks would be included in the operating expenses of the carrier as joint facility rents and included in the operating revenues of the owning company. The contract provides for the adjustment of the compensation for the use of the property by the carrier. When either of the parties to the agreement is not satisfied with the rates of compensation, notice may be given to the other party

61 and the rates reviewed by arbitrators. In our finding of value of the property owned or used in common-carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement, or a trackage right. We do recognize that the advantages to the carrier of these rights are valuable

and essential to the operation of its property as a whole. Nevertheless, for the purpose of finding a rate-base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers.

The carrier contends that it is the owner and user of an undivided interest in the Grand Central Terminal property, Fifty-ninth Street to Forty-second Street. The carrier has the right to the joint use of this property under an agreement dated November 1, 1872, and commonly referred to as the "tripartite lease," which was an agreement entered into by the New York and Harlem Railroad, the New York Central and Hudson River Railroad, and the New York and New Haven Railroad, and subsequent agreements between the carrier and the first two of these companies. Of these later agreements, the one dated July 24, 1907, was made to provide for the construction of the present Grand Central Terminal. All agreements are subject to the rights of the carrier under the agreement of March 17, 1848, with respect to the use by the carrier of the tracks of the New York and Harlem Railroad. The agreements provide for the leasing to the carrier of the use in common with the New York Central and Hudson River Railroad Company of the terminal property for its use for traffic other than freight up to but not exceeding 50 per cent of the maximum capacity. The lease is in perpetuity, but contains a defeasance clause in the covenant to forfeit the right on failure to pay the compensation stated. This compensation is computed by dividing the operating expenses between the carrier and the New York Central and Hudson River Railroad on the basis of use and the carrier is to pay interest at the rate of 4.5 per cent on the cost of construction. The operating official is selected by the two using carriers and is subject to removal by either carrier on notice. These same agreements provide for the carrier's use of a portion of the Mott Haven yard for coaches and the power-distribution system for its power. For the year ended on date of valuation the carrier's use was 41.93 per cent of the total use of the Grand Central Terminal, 43.74 per cent of the Mott Haven yards, and 24 per cent of the power-distribution system.

The carrier argues that the value of property is in its use, and relies on the principle of law applicable to
62 the taxation of real property in which it has been held that "the value of property consists in its use, and he who owns the use forever, though it is on condition subsequent, is the true owner of the property for the time being. *Wells* v. *Savannah*, 181 U. S. 531. In the case cited it was a question of who should pay the taxes on certain real property, the purchaser in possession and paying ground rent with the right of purchase, or the vendor holding the title and right to receive the rent. The right to use jointly these terminal facilities up to a maximum of 50 per cent of the total use is in the carrier on condition that it pay interest at 4.5 per cent on the construction cost, which may be considered the rent, and to pay its proportion of the operating cost based on the use. There is no provision by which the carrier can acquire an interest in the fee or an indefeasible title to any or all of the property other than that of a cotenant or joint user as defined by the agreement. The carrier does not own an interest that would cause it to suffer loss by deflation or to profit by the enhancement of value which might take from or add to the intrinsic worth of the property used. The rent is chargeable to joint-facility rents, which account is described as—

This account shall include amounts payable accrued as rent for tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies or individuals, and in the joint use of which the accounting company participates.

This account is taken into consideration when computing the "net railway operating income" under section 15a of the act. In this same section it is provided that the final value which we find under section 19a shall be deemed the value for the purpose of determining the aggregate value of the property. To report this property for the purpose of rate-making either as property owned and used or used but not owned by the carrier would result in a duplication. The right to use these extensive terminal facilities is a commercially valuable contract right owned by the carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value,

for rate-making purposes, of the carrier's property owned or used in common-carrier service, no specific value will be reported for the right of the carrier to the use of this property. We sustain the omission from the tentative valuation of the reproduction cost of this property and a finding of the value of the right to use it.

The Boston Terminal Company.

The carrier protests our failure to include in the tentative valuation any sum for the value of its right to the joint use of The Boston Terminal Company's property in Boston. It contends that the value of such right should have been reported as $17,802,000.

63 In our order of November 13, 1925, we reported the final value of the property of The Boston Terminal Company as of June 30, 1915, to be $20,770,500, and stated fully the ownership, control, and use of the property by the several common carriers including that of the carrier. *Boston Terminal Co.*, 103 I. C. C. 707. In the tentative valuation the basis of use of this property is shown as "rental" and it is stated that the passenger terminal is owned and used by The Boston Terminal Company. The omission from the tentative valuation of a value for the carrier's right to use this terminal is in accord with our previous decisions and our finding herein with respect to the contentions that a value should be reported for its right to use the Grand Central terminal properties in New York City. No change will be made in the tentative valuation in this respect.

Property Owned but not Used.

The carrier protests the statement in the tentative valuation with respect to the property which it owns and the joint use of which it leases to the Central New England Railway Company. This property comprises 34.984 miles of first main track, 33.403 miles of second main track, and 22.07 miles of yard tracks and sidings, and extends from Danbury, Conn., to Hopewell, N. Y., and from Wicopee Junction to Beacon, N. Y. Under the agreement these tracks were to be used jointly by the carrier and the lessee, the rent of the whole use of the property being at the rate of $10,000 per month. The additional payments to be

made for this use are the taxes and cost of maintenance and operation. These expenses and the rent are paid by each user in proportion to the use by it of the whole use made of the property.

The witness for the carrier testified that this was wholly owned and jointly used by the carrier and maintained by it. He did not testify as to the extent of the use by the carrier for the year ended on date of valuation or what use was then actually being made of this property. The right of the carrier to the joint use of this property is not in issue. The tentative valuation states that on date of valuation the Central New England Railway used the property solely and paid the full amount of rent, including taxes, maintenance, and operating expenses. We find no error in this statement. When it was ascertained that the property was solely used by the Central New England Railway it was reported in our tentative valuation of that carrier as property used but not owned. That report was made final by our order of June 26, 1925, in *Central New England Ry. Co.*, 97 I. C. C. 773, wherein we found a final value for rate-making purposes, as of June 30, 1916, of the property
64 owned or used for common carrier purposes by that company. We found the cost of reproduction new of this property owned by the carrier to be $3,472,494, and cost of reproduction less depreciation, $2,998,245; the present value of the land to be $122,080.30; and the single-sum final value to be $3,250,000. In the tentative valuation in this case, the date of valuation of which is June 30, 1915, the same cost, value, and final value are reported. As the owner of this property, the carrier protests these amounts and contends that the cost of reproduction new should be not less than $4,188.646 and final value $4,310,726. In the evidence offered at the hearing in support of its protest it treated this property as a part of its system. It contends that any modification made in the tentative valuation with respect to prices applied to grading, rails, ballast, track-laying and surfacing, crossings and signs, and amounts reported for other expenditures and interest during construction should be reflected so far as applicable in our finding of final value for this property which is owned but not used, irrespective of our findings of value as of date one year later and in another proceeding.

The bureau, in reviewing the prices applied in the tentative valuation and in its recommendations made at the hearing, has not omitted this property from consideration. The complete statements of costs of reproduction new and less depreciation of this property are included in the tentative valuation of the carriers property and are a part of the record in this case. Wherever we have concluded to change the tentative valuation in respect to any of the foregoing accounts for property owned or used, similar changes, so far as they may be applicable, will be made in the amounts reported for this property owned but not used.

Cost of Reproduction Less Depreciation.

The carrier protests the amount deducted from the cost of reproduction new for depreciation as excessive and not obtained by methods, rules, and principles which would indicate the true amount of the depreciation in the property or the money equivalent thereof. It contends that no depreciation should be found in a going concern where there is no impairment in its ability to function with full efficiency as a whole. It argues that if we are required by the valuation act to find depreciation which may have accrued with respect to the several units or groups of units which go to make up the whole, we should find a cost of reproduction less depreciation for each which is equal to its present worth to the plant as a whole. It further contends that the physical property does not deteriorate beyond an amount which is offset by the appreciation,
65 solidification, and other factors which add to the value of the property as a whole. The testimony of its witnesses, except in the cases of some minor errors, did not establish any new facts or show errors in the computation of the depreciation in the tentative valuation in accordance with the principles and methods approved by us in previously decided cases. Nor does the evidence in the form of opinions of experts which attack the principles which we have repeatedly approved as applicable to the findings of reproduction cost less depreciation convince us that any change should be made in the tentative finding in this case. The amount deducted for depreciation will be modified only in so far as it may be affected by the changes approved for the reproduction costs of the several accounts as stated elsewhere in this report.

Appreciation.

The carrier protests that, notwithstanding the fact that we have recognized that appreciation is an element of value, we have not found a definite sum for it as in our treatment of depreciation. The opinion of each of its expert witnesses is that the amount of appreciation is at least equal to the depreciation in the property. The carrier does not show how a definite sum can be obtained for appreciation in the several groups of property by the consideration of tangible data such as we have had before us when making our estimate of depreciation. It will be considered in our finding of value for the whole property, along with the cost values and other values there considered.

Going-concern Value.

The carrier protests our omission from the tentative valuation of a separate sum for going-concern value. In its protest it stated that such a sum should be found and it should be not less than $14,848,135. Its witnesses did not agree as to the amount which should be found for this value. One witness stated that in his opinion the lowest estimate which should be placed on the cost of overcoming initial difficulties incident to operation in creating the going concern was $32,125,831. This amount was obtained by taking the net interest requirements for one year's initial operation, plus operating loss resulting from handling one-half of a normal year's business. This, he considered, was a fair estimate of the best result that could be reasonably attained during the first year. Another witness was of the opinion that $22,667,367 would be a proper amount to find for going-concern value. This represents interest for one year on cost of reproduction new of the road accounts, general expenditures, and material and supplies, less one-half the railway operating income for 1915, plus
66 miscellaneous costs due to initiating traffic with other carriers and the public. In its brief the carrier contends that a sum of $24,000,000 should be included as the value of going concern.

Many of the protests made by other carriers to our tentative valuations of their properties include contentions similar to these of the carrier. None has convinced us that its

method of arriving at a definite sum is the correct and practical one. There seems to be a lack of uniformity of opinion as to what basis is proper for obtaining such a sum. This diversity is illustrated in the difference of opinions of the witnesses in this case. We report all the costs which are specifically named in the valuation act, on which we can obtain tangible data, and we find a final single-sum value after a consideration of those tangible costs and the intangible elements of value which inhere in a fully organized and operating property. We have been unable, however, to ascertain a separate value for going-concern value and the record before us does not afford a basis therefor.

Working Capital.

There is included for working capital in the tentative valuation $9,369,342, the sum of the cash and the value of the material and supplies as stated in the carrier's balance sheet on date of valuation. A carrier witness testified that this amount should be increased $144,001 to include $35,297 said to be the value of equipment issued to employees and charged to operating expenses, $88,695 in working fund advances to agents, and $20,009, the average current investment in insurance and rents paid in advance. The cost of equipment issued to employees and charged to operating expenses has no place in the determination of the amount of the investment in material and supplies as working capital, inasmuch as the equipment is already in service. Consideration has been given to the effect of cash balances in the hands of agents in the analysis made by the bureau in connection with cash working capital. No evidence is of record as to the length of time that rents and premiums for insurance were paid in advance of the mean date of performance of the contract and no allocation was made as between payments on account of common-carrier and noncarrier property. In the absence of this information and in consideration of the comparatively small amount involved in the items, no further discussion thereof is warranted.

A witness for the bureau recommended the inclusion in working capital of $4,650,000 for material and supplies. This amount is based on the average balance of useful materials held for operating purposes during a

67 period of five years prior to valuation date, trended in accordance with the increase of operating expenses incident to the expansion of the carrier's business during this interval. The witness stated that as a result of a change in corporate policy the balance in material and supplies for the two years immediately preceding valuation date was substantially larger in proportion to the corresponding operating expenses than during the prior three years. He therefore increased the investment in material and supplies, determined as above stated, to reflect more accurately conditions as of date of valuation. A deduction was made under his method for such material and supplies as were held for additions and betterments. The carrier concedes that this deduction is appropriate in the determination of investment in working capital for operating purposes, but insists that the material held for additions and betterments is common-carrier property and should be included in account 47, Unapplied Construction Material, as a part of its rate-making value. It is unnecessary for us to distinguish here between these materials and materials already charged to operating expenses and intended for operating purposes but not as yet applied. We are satisfied that the materials held for additions and betterments should be designated as unapplied construction material instead of noncarrier property. However, they may not be included as a separate element of the rate-making value, as provision is made in our accounting classification for the addition to the cost of the materials of a reasonable interest charge when included in the investment account. In our determination of the reproduction costs interest has been computed over appropriate construction periods of all materials found in place and in service at date of valuation. Since the cost of holding such items for construction purposes becomes a part of both the investment and the cost of reproduction, it is already adequately reflected in our finding of value.

The accountant testified that information concerning the carrier's operating condition showed that even at the time in an average month when the operating receipts anticipated operating disbursements by the shortest interval the incoming receipts sufficiently anticipated in time the operating expenditures and taxes to provide an adequate re-

serve or buffer fund to meet all normally recurring emergencies. He was of opinion, therefore, that the carrier had no investment in cash for working capital. No evidence was offered by the carrier in regard to its investment in working capital excepting the general opinions to which reference has been made heretofore. We find that the carrier's investment in working capital, consisting wholly of material and supplies, was $4,650,000 at date of valuation, and that the $932,699.18 remaining of the $5,582,699.18 recorded as the value of material and supplies held at valuation date consists of unapplied construction material,
68 scrap, and material held in excess of the carrier's normal requirements as shown by its actual experience.

Final Value.

The original cost to date of the carrier's property could not be ascertained. Its books record an investment of $195,505,843.72 in road and equipment, including lands and rights, which, if adjusted in accordance with our accounting examination, would be increased to $197,670,038.79. This sum includes $72,633,580.96, less an undetermined portion thereof assignable to offsetting items recorded at $20,795,425.05, of par value of securities issued, assumed, or surrendered, the cash value of which at the time of entry upon the books can not be ascertained. The portion of the investment representing the cost of lands and rights has not been definitely determined. The value of lands and rights owned and used for common-carrier purposes on date of valuation, determined in comformity with our usual methods, is $53,804,886.29; used but not owned, $38,551,811.25; and owned but not used, $122,080.30. The cost of reproduction new of the property owned and used, exclusive of lands and rights and material and supplies, we find to be $241,665,720 and the cost of reproduction less depreciation, $184,615,712; for property used but not owned, $95,871,306 and $78,517,972, respectively; and for property owned but not used, $3,385,270 and $2,944,382, respectively.

We have given careful consideration to all facts of record pertaining to the value of the common-carrier property of the carrier as an organized, developed, well-maintained, and seasoned property in operation as a going concern.

We find that the value for rate-making purposes of the property of the carrier owned and used for purposes of a common carrier, including $4,650,000 for working capital, is $256,400,000; for property used but not owned, $120,615,724; and for property owned but not used, $3,516,650.

On like consideration of the facts of record pertaining to the values of the other carriers embraced in this report, we find that the final values, for rate-making purposes, of the properties devoted to common-carrier purposes of each of these corporations is as follows:

	Owned but not used
Old Colony Railroad	$49,795,000
Boston and Providence (Mass.)	16,350,000
Boston and Providence (R. I.)	5,000,000
Providence, Warren and Bristol	2,025,000
Harlem River and Port Chester	30,154,500
Holyoke and Westfield	1,850,000
Providence and Worcester	10,375,000
Chatham Railroad	150,000
Norwich and Worcester	6,187,000

69 An order will be entered in accordance with our findings.

WOODLOCK, *Commissioner,* concurring:

Inasmuch as the methods employed in this case are similar in their essentials to those employed in the case of The Delaware and Hudson Company valuation, I concur in the instant report for reasons stated in my expression in *Delaware & Hudson Co.,* 116 I. C. C. 611.

EASTMAN, *Commissioner,* dissenting:

My reasons for dissent are those which are indicated in the first paragraph of my dissenting opinion in *New York C. R. Co.,* 27 Val. Rep. 1, page 74, decided July 8, 1929.

Order.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 13th Day of November, A. D. 1929.

Valuation Docket No. 311.

The New York, New Haven and Hartford Railroad Company; Old Colony Railroad Company; Boston and Providence Railroad Corporation (Mass.); Boston and Providence Railroad Corporation (R. I.); Providence, Warren and Bristol Railroad Company; The Harlem River and Port Chester Railroad Company; Holyoke and Westfield Railroad Company; Providence and Worcester Railroad Company; Chatham Railroad Company; and Norwich and Worcester Railroad Company.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the following be, and it is hereby declared to be, the final valuation of the properties of The New York, New Haven and Hartford Railroad Company; Old Colony Railroad Company; Boston and Providence Railroad Corporation (Mass.); Boston and Providence Railroad Corporation (R. I.); Providence, Warren and Bristol Railroad Company; The Harlem River and Port Chester Railroad Company; Holyoke and Westfield Railroad Company; Providence and Worcester Railroad Company; Chatham Railroad Company; and Norwich and Worcester Railroad Company, as of June 30, 1915:

The New York, New Haven and Hartford Railroad Company.

Location and general description of property.—The railroad of The New York, New Haven and Hartford
70 Railroad Company, herein called the carrier, is situated in the States of Connecticut, Massachusetts, Rhode Island, and New York. The carrier's lines are standard gage throughout, 58 per cent of the mileage being single track, about 37 per cent double track, and about 5 per cent four track. An important terminal section of the road between New Rochelle, N. Y., and Harlem River (Willis Avenue and One hundred thirty-third Street), New York City, about 12 miles in length, is laid with six tracks. The railroad is steam operated, with the exception of about

169.7 miles, which is equipped for electrical operation. The operated property is a network of tracks covering the States of Connecticut, Rhode Island, southern and southeastern Massachusetts, and extending into southeastern New York. The principal termini are New York City and Boston.

The carrier wholly owns 1,250.227 miles of road, of which it uses 1,215.067 miles and leases 35.160 miles to other carriers. It also wholly uses 751.158 miles of road owned by its lessors and described hereinafter in the reports on those companies. The carrier wholly owns and uses 2,604.340 miles of all tracks, wholly owns but does not use 90.715 miles of all tracks, and wholly uses but does not own 1,796.800 miles of all tracks. It also jointly uses but does not own 1.152 miles of all tracks. These tracks are classified according to ownership and use and by States in the trackage table in Appendix 1. In that appendix, also, is given further description of the properties operated by the carrier.

Jointly used property.—The carrier has no property classified as jointly owned and used, except minor facilities. It has rights to use the property of other carriers with a road mileage of 53.52 miles and grants trackage rights to other carriers over 54.43 miles of its own road mileage. Important trackage rights used by the carrier are the Boston terminal, the South Station, with 13.033 miles of all tracks, the entrance to New York, N. Y., from Woodlawn Junction to Fifty-ninth Street, with 45.465 miles of all tracks, the Grand Central Terminal, with 27.173 miles of all tracks, and the Mott Haven Yard, with 13.973 miles of yard tracks. In Appendix 2, under leased railway property, will be found a statement showing the property used jointly with other carriers and the terms of use.

Corporate history.—The carrier was formed as a consolidation of the Hartford and New Haven Railroad Company and the New York and New Haven Railroad Company on August 6, 1872, with a principal office at New Haven, Conn., under a law of incorporation of Connecticut passed July 26, 1871, and of Massachusetts, passed April 5, 1872. These acts gave authority to the Hartford and New Haven Railroad Company "to sell, transfer, merge, and consolidate its corporate rights, powers, and estate to, into and with" the New York

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and New Haven Railroad Company. On May 17, 1893, "the stockholders of the New York, New Haven and Hartford Railroad Company" were made a corporation by that name in Rhode Island. Further information in regard to corporate history and the development of fixed physical property is given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation, the carrier has issued or assumed capital securities to the amount of $498,085,860, of which $124,224,510 have been retired, leaving outstanding on date of valuation $373,861,350. The securities outstanding consist of $157,117,900 capital stock and $216,743,450 funded debt, including $2,463,350 par value held by the carrier. The carrier issued short-term notes to an amount of $381,428,418.88, of which $351,289,418.88 have been retired, leaving $30,139,000 outstanding on date of valuation. The considerations for which securities were issued and other facts pertinent to the capitalization of the carrier are given in Appendix 2. The carrier is not controlled by any single interest.

Gross and net earnings.—The results of corporate operations of the carrier from October 1, 1872, to date of valuation are stated in detail in Appendix 2, and are summarized as follows:

Gross earnings (railway operating revenues)		$1,199,268,710.35
Operating expenses (relay operating expenses)		820,491,965.27
Resulting in net earnings (net revenue from railway operations) of		378,776,745.08
During the same period taxes assessed (railway tax accruals) amounted to	$65,996,746.89	
Uncollectible railway revenues amounted to	8,410.64	
		66,005,157.53
Resulting in an income from railway operations (railway operating income) of		312,771,587.55
In addition to this there were revenues from miscellaneous operations of	$7,254,934.23	
Also income from nonoperating sources (nonoperating income) of	88,026,431.28	
		95,281,365.51
Resulting in gross income for the period (gross income) of		408,052,953.06
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to		125,400,910.88
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income), of		282,652,042.18

72 The income account of the carrier for the period October 1, 1872, to date of valuation shows that there have been dividend appropriations of income aggregating $169,707,612.

Dividends were paid in each of the 42 fiscal years from the organization to 1914. From 1873 to 1895 the rate was 10 per cent per annum, from 1896 to 1913, 8 per cent, and in 1914, 1.5 per cent. Prior to 1890 the payments were made semiannually and quarterly thereafter until 1914, when one payment was made. The net income was sufficient for dividends in each year to 1907, except in 1894 and 1895. After 1907 it was less than the dividend requirement in each year except 1910. In those years in which the net income did not equal the amount needed for dividends the deficits were as follows:

1894	$1,257,614.55
1895	315,301.26
1908	2,516,692.85
1909	453,613.02
1911	1,267,539.99
1912	929,989.40
1913	4,564,325.28
1914	2,088,105.63

The dividend of 1914, $2,356,768.50, was shown in the annual report to the stockholders as paid out of surplus, but was charged in the income account and was so reported to us.

General balance sheet.—The general balance sheet stated by the carrier, as showing its financial condition on date of valuation, follows.

Assets.

Investments:		
Investment in road and equipment		$195,505,843.72
Improvements on leased railway property		3,990,421.40
Sinking funds—		
Total book assets	$144,495.00	
Carrier's own issues included	144,000.00	
		495.00
Miscellaneous physical property		5,357,414.95
Investment in affiliated companies—		
Stocks	143,325,399.25	
Bonds	18,362,496.00	
Notes	38,126,756.09	
Advances	1.00	
		199,815,152.34
Other investments—		
Stocks	19,127,319.04	
Bonds	423,200.00	
Notes	388,894.05	
Advances	7,644,464.75	
		27,584,177.84
Total		432,253,505.25

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Current assets:		
Cash		$3,786,642.93
Special deposits		2,113,400.82
Loans and bills receivable		4,693.97
Traffic and car-service balances receivable		211,876.27
Net balances receivable from agents and conductors		3,133,065.66
Miscellaneous accounts receivable		4,056,955.93
Material and supplies		5,582,699.18
Interest and dividends receivable		427,823.78
Other current assets		201,314.16
Total		19,518,472.70
Deferred assets: Working-fund advances		88,694.87
Unadjusted debits:		
Rents and insurance premiums paid in advance		20,008.71
Other unadjusted debits (including road and equipment suspense, $599,310.04)		3,068,374.05
Total		3,088,382.76
Grand total		454,949,055.58

Liabilities.

Stock:		
Capital stock		157,117,900.00
Premium on capital stock		19,282,887.50
Total		176,400,787.50
Long-term debt:		
Funded debt unmatured—		
Book liability at date of valuation	$216,743,450.00	
Held by the carrier	2,463,350.00	
		214,280,100.00
Nonnegotiable debt to affiliated companies—		
Notes	175,000.00	
Open accounts	632,536.58	
		807,536.58
Total		215,087,636.58
Current liabilities:		
Loans and bills payable		30,139,000.00
Traffic and car-service balances payable		4,430,008.78
Audited accounts and wages payable		3,741,729.72
Miscellaneous accounts payable		56,000.00
Interest matured unpaid		1,949,110.94
Dividends matured unpaid		11,643.00
Funded debt matured unpaid		6,512.68
Unmatured interest accrued		2,427,662.31
Unmatured rents accrued		489,070.05
Other current liabilities		230,233.11
Total		43,480,970.59
Deferred liabilities: Other deferred liabilities		155,313.06

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Unadjusted credits:	
Tax liability	$205,542.57
Insurance and casualty reserves	697,608.69
Accrued depreciation, equipment	3,742,865.27
Other unadjusted credits	1,968,227.80
Total	6,614,244.33
Equipment and personal property leased	9,477,069.23
Corporate surplus: Profit and loss credit balance	3,733,034.29
Grand total	454,949,055.58

A statement of contingent liabilities will be found in chapter on history of corporate financing in Appendix 2.

Investment in road and equipment.—The investment of the carrier in road and equipment, including land, on date of valuation, is stated in its books as $195,505,843.72. With readjustments indicated by our accounting examination, this amount would be increased to $197,670,038.79, of which $72,633,580.96, less an undetermined portion thereof assignable to offsetting items included in amounts recorded at $20,795,425.05, represents the par value of securities issued, assumed, or surrendered, the cash value of which at the time of the transaction we are not able to report, because it has been impossible to obtain the necessary information. There may be included in the amount stated some of the cost of the noncarrier lands and structures owned. Further information will be found in Appendix 2.

Improvements on leased railway property.—The investment of the carrier in improvements on leased railway property on date of valuation is stated in its books as $3,990,421.40. If certain readjustments were made, as detailed in Appendix 2, this amount would be increased to $4,264,961.10.

Original cost to date.—The original cost to date of all common-carrier property of the carrier can not be ascertained, as the necessary records are not obtainable. Such information respecting actual expenditures as can be ascertained is stated in Appendix 2.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land and material and supplies, owned or used by the carrier, including the carrier's and lessors' portions of jointly owned minor facilities, are as follows:

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Classification.	Cost of reproduction new	Cost of reproduction less depreciation
As a whole.		
Wholly owned and used	$241,665,720	$184,615,712
Wholly owned but not used, leased to—		
Central New England Railway Company	3,397,200	2,923,740
Boston and Maine Railroad	2,360	1,766
Hartford & New York Transportation Company	8,266	4,595
The New York Central Railroad Company and Adams Express Company (carrier's portion of property owned jointly with The New York Central Railroad Company)	329,486	319,976
Total	3,737,312	3,250,077
Wholly used but not owned, leased from—		
Old Colony Railroad	43,288,091	34,956,629
Boston and Providence (Mass.)	13,835,538	11,179,688
Boston and Providence (R. I.)	3,145,358	2,544,763
Providence, Warren and Bristol	1,997,018	1,594,797
Harlem River and Port Chester	18,179,206	15,857,588
Holyoke and Westfield	760,545	599,955
Providence and Worcester	8,536,698	6,750,177
Chatham Railroad	173,261	138,207
Norwich and Worcester	5,445,256	4,427,388
The Connecticut Company	10,267	4,346
Ireland Real Estate Company	127,828	115,078
Total	95,499,066	78,168,616
Jointly used but not owned, used with the Boston and Maine Railroad; owned, one-third each, by the Providence and Worcester, the Norwich and Worcester, and the Boston and Maine Railroad; lessors' portions, leased to the carrier	372,240	349,356
Total used but not owned	95,871,306	78,517,972
Total owned	245,403,032	187,865,789
Total used	337,537,026	263,133,684
In Connecticut.		
Wholly owned and used	109,196,274	91,691,970
Wholly owned but not used, leased to—		
Hartford & New York Transportation Company	8,266	4,595
Central New England Railway Company	352,042	305,695
Total	360,308	310,290
Wholly used but not owned, leased from—		
The Connecticut Company	10,267	4,346
Norwich and Worcester	3,935,302	3,178,704
Total	3,945,569	3,183,050
Total owned	109,556,582	92,002,260
Total used	113,141,843	94,875,020

Classification	Cost of reproduction new	Cost of reproduction less depreciation
As a whole		
In Massachusetts		
Wholly owned and used	27,774,186	21,981,776
Wholly owned but not used, leased to the Boston and Maine Railroad	2,360	1,766
Wholly used but not owned, leased from—		
Old Colony Railroad	41,558,441	33,644,385
Boston and Providence (Mass.)	13,289,349	10,724,520
Providence, Warren and Bristol	43,238	28,713
Holyoke and Westfield	760,545	599,955
Providence and Worcester	3,063,805	2,490,654
Chatham Railroad	173,261	138,207
Norwich and Worcester	1,509,954	1,248,084
Total	60,398,593	48,875,118
Jointly used but not owned, used with the Boston and Maine Railroad; owned, one-third each, by the Providence and Worcester, the Norwich and Worcester, and the Boston and Maine Railroad; lessors' portions, leased to the carrier	372,240	349,356
Total used but not owned	60,770,833	49,224,474
Total owned	27,776,546	21,983,542
Total used	88,545,019	71,206,250
76 *In New York.*		
Wholly owned and used	$8,268,898	$6,861,848
Wholly owned but not used, leased to—		
Central New England Railway Company	3,045,158	2,618,045
The New York Central Railroad Company and Adams Express Company (carrier's portion of property owned jointly with The New York Central Railroad Company)	329,486	319,976
Total	3,374,644	2,938,021
Wholly used but not owned, leased from—		
Harlem River and Port Chester	18,179,206	15,857,588
Ireland Real Estate Company	127,828	115,078
Total	18,307,034	15,972,666
Total owned	11,643,542	9,799,869
Total used	26,575,932	22,834,514
In Rhode Island.		
Wholly owned and used	14,971,955	12,300,517
Wholly used but not owned, leased from—		
Old Colony Railroad	1,729,650	1,312,244
Boston and Providence (Mass.)	546,189	455,168
Boston and Providence (R. I.)	3,145,358	2,544,763
Providence, Warren and Bristol	1,953,780	1,566,084
Providence and Worcester	5,472,893	4,259,523
Total	12,847,870	10,137,782

Classification.	Cost of reproduction new	Cost of reproduction less depreciation
As a whole.		
Total owned	14,971,955	12,300,517
Total used	27,819,825	22,438,299
Not allocated to States.		
Wholly owned and used	81,454,407	51,779,601

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The carrier owns and uses for its purposes as a common carrier 20,049.56 acres of lands. It also owns 684.92 acres of carrier lands which are used by the Central of New England Railway Company. The obtainable information respecting the original cost of these lands is given in Appendix 2. The areas and present values of the carrier lands, owned or used, are as follows:

Classification.	Acres.	Present value.
As a whole.		
Owned and used	20,049.56	$53,270,217.29
Owned but not used, leased to the Central New England Railway Company	684.92	122,080.30
Used but not owned, leased from—		
Old Colony Railroad	7,670.68	11,729,396.79
Old Colony Railroad, but owned by private parties	0.14	2,100.00
Boston and Providence (Mass.)	781.22	4,673,246.60
Boston and Providence (R. I.)	68.25	2,335,586.71
Providence, Warren and Bristol	171.34	297,732.97
Harlem River and Port Chester	481.61	13,732,443.88
Holyoke and Westfield	138.63	1,216,028.70
Providence and Worcester	725.60	$3,079,982.45
Chatham Railroad	70.61	3,015.15
Norwich and Worcester	836.78	1,283,914.37
West End Street Railway Company	0.16	5,236.50
Ireland Real Estate Company	0.83	168,271.10
Other private parties	2.05	18,887.10
Total	10,947.90	38,545,842.32
Total owned	20,734.48	53,392,297.59
Total used	30,997.46	91,816,059.61
In Connecticut.		
Owned and used	13,787.40	23,191,821.05
Owned but not used, leased to the Central New England Railway Company	80.94	9,177.60

Classification.	Acres.	Present vaule.
As a whole.		
Used but not owned, leased from—		
Norwich and Worcester	652.76	653,558.87
Private parties	1.47	7.35
Total	654.23	653,566.22
Total owned	13,868.34	23,200,998.65
Total used	14,441.63	23,845,387.27
In Massachusetts.		
Owned and used	3,727.96	16,743,952.03
Used but not owned, leased from—		
Boston and Providence (Mass.)	720.32	4,558,701.95
Old Colony Railroad	7,427.11	11,058,156.82
Old Colony Railroad, but owned by private parties	0.14	2,100.00
Chatham Railroad	70.61	3,015.15
Holyoke and Westfield	138.63	1,216,028.70
Providence and Worcester	367.91	613,441.30
Norwich and Worcester	184.02	630,355.50
West End Street Railway Company	0.16	5,236.50
Private parties	.58	18,879.75
Total	8,909.48	18,105,915.67
Total owned	3,727.96	16,743,952.03
Total used	12,637.44	34,849,867.70
In New York.		
Owned and used	338.47	4,069,622.42
Owned but not used, leased to the Central New England Railway Company	603.98	112,902.70
Used but not owned, leased from—		
Harlem River and Port Chester	481.61	13,732,443.88
Ireland Real Estate Company	0.83	168,271.10
Total	482.44	13,900,714.98
Total owned	942.45	4,182,525.12
Total used	820.91	17,970,337.40
In Rhode Island.		
Owned and used	2,195.73	9,264,821.79
Used but not owned, leased from—		
Old Colony Railroad	243.57	671,239.97
Boston and Providence (Mass.)	60.90	114,544.65
Boston and Providence (R. I.)	68.25	2,335,586.71
Providence and Worcester	357.69	2,466,541.15
Providence-Warren and Bristol	171.34	297,732.97
Total	901.75	5,885,645.45
Total owned	2,195.73	9,264,821.79
Total used	3,097.48	15,150,467.24

78 In addition, 0.82 acre of land in Rhode Island, present value $17,841.50, is leased from private parties by the Old Colony Railroad and by it subleased to the

carrier, which has subleased the land to The New England Steamship Company.

Rights in public domain.—The carrier owns and uses for common-carrier purposes rights in public domain with original costs and present values as follows:

State.	Costs supported by accounting records.	Present value.
Connecticut	$472.00	$472.00
New York	416,367.24	299,314.00
Total	416,839.24	299,786.00

Rights in private lands.—The carrier uses for common-carrier purposes rights in private lands as follows:

Classification.	Present value.
As a whole.	
Owned and used	$234,882.99
Used but not owned, leased from—	
Boston and Providence (Mass.)	1,020.00
Old Colony Railroad	4,123.93
Providence and Worcester	815.00
Providence, Warren and Bristol	10.00
Total	5,968.93
Total owned	234,882.99
Total used	240,851.92
In Connecticut.	
Owned and used	25,375.99
In Massachusetts.	
Owned and used	23,607.00
Used but not owned, leased from—	
Boston and Providence (Mass.)	420.00
Old Colony Railroad	3,673.93
Providence and Worcester	375.00
Total	4,468.93
Total owned	23,607.00
Total used	28,075.93
In New York.	
Owned and used	8,100.00
In Rhode Island.	
Owned and used	177,800.00
Used but not owned, leased from—	
Boston and Providence (Mass.)	600.00
Old Colony Railroad	450.00
Providence and Worcester	440.00
Providence, Warren and Bristol	10.00
Total	1,500.00
Total owned	177,800.00
Total used	179,300.00

79 The obtainable information respecting the cost of rights in private lands owned by the carrier appears in Appendix 2.

Property held for purposes other than those of a common carrier.—The investment in miscellaneous physical property on date of valuation is stated on the books of the carrier to be $5,357,414.93, comprising certain real estate in Boston, known as the Park Square Property, with a book value of $4,870,017.91, and certain trolley lines in Connecticut, with a book value of $487,397.04. The carrier owns 5,856.59 acres of noncarrier lands. The obtainable information as to the original cost of these lands is given in Appendix 2. The present values of noncarrier lands, including the structures thereon, together with the present value of noncarrier structures situated on carrier lands, is shown as follows:

State.	Acres.	Present value. Noncarrier lands, including improvements thereon.	Noncarrier structures on carrier lands.
Connecticut	4,036.28	$3,376,431.12	$130,271.00
Massachusetts	975.04	8,761,567.72	10,574.00
New York	190.68	794,508.31	5,335.00
Rhode Island	654.59	629,810.52	1,710.00
Total	5,856.59	13,562,317.67	147,890.00

The Park Square Property is included in above values assigned to the noncarrier lands. Reference is made to the reports on the respective lessors of the carrier for information as to the amounts and present value of noncarrier lands and other noncarrier property owned by these companies. Under the terms of the several leases this property is assigned to the carrier.

The carrier has on date of valuation investments in securities of other companies of a total book value, as shown on the balance sheet, of $227,399,330.18, which may be classified as follows:

Investment in Boston and Maine Railroad properties	$29,017,616.95
Investment in railroads	86,027,209.14
Investment in trolley lines, water transportation, and public utilities	98,220,766.67
Other investments	14,133,737.42
Total	227,399,330.18

The recorded considerations under which these securities were acquired, with a list of securities held on date of valuation, are given in Appendix 2.

The carrier owns and holds cash on hand and material and supplies in the amount of $9,369,342.11. Of this amount, $4,650,000 is found to be necessary for its
80 use as working capital and that sum is included in the final value stated elsewhere in this report. The remainder, $4,719,342.11, is owned and held for noncarrier purposes.

Aids, gifts, grants of rights of way, and donations.—The carrier reports certain lands as having been acquired by it or its predecessors as aids. It reports certain other lands which were acquired through deeds reciting nominal considerations or deeds in which no considerations were stated. For the purposes of this report these lands are considered as apparent aids. We are not able to report their value at the time acquired. The areas and present values of the lands acquired through aids are as follows:

State.	Carrier lands		Noncarrier lands	
	Acres.	Present value.	Acres.	Present value.
Connecticut	902.13	$2,307,162.88	137.16	$83,635.41
Massachusetts	93.00	151,697.27	4.60	12,517.46
New York	6.89	30,498.33	.66	2,040.16
Rhode Island	63.97	46,829.91	.....	.....
Total	1,065.99	2,536,188.39	142.42	98,193.03

The above totals are included in the preceding summaries of lands owned.

The carrier returned in addition a passenger station at Millis, Mass., received as an aid by a predecessor, of which further details are given in Appendix 2. The records show that the predecessors of the carrier received aids of various kinds. These are given in such detail as is possible in Appendix 2.

Material and supplies.—The book value of material and supplies on hand on date of valuation is shown in the carrier's records as $5,582,699.18, of which $4,650,000 represents a normal stock of material and supplies held for and useful in common-carrier operations.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, working capital, and all other matters which appear to have a bearing upon the values here re-

ported, the values, for rate-making purposes, of the property of the carrier, owned or used, devoted to common-carrier purposes, are found to be as follows:

Owned and used	$256,400,000
Owned but not used, leased to—	
Central New England Railway Company	3,175,000
Boston and Maine Railroad	1,850
Hartford and New York Transportation Company	4,800
The New York Central Railroad Company and Adams Express Company	335,000
Total	3,516,650
81	
Used but not owned, leased from—	
Old Colony Railroad—	
Owned by lessor	$48,250,000
Owned by private parties	2,100
Boston and Providence (Mass.)	16,350,000
Boston and Providence (R. I.)	5,000,000
Providence, Warren, and Bristol	2,025,000
Harlem River and Port Chester	30,150,000
Holyoke and Westfield	1,850,000
Providence and Worcester	10,375,000
Chatham Railroad	150,000
Norwich and Worcester	6,150,000
West End Street Railway Company	5,237
The Connecticut Company	4,500
Ireland Real Estate Company	285,000
Other private parties	18,887
Total	120,615,724
Total owned	259,916,650
Total used	377,015,724

There is included in the value stated as owned and used the sum of $4,650,000 on account of working capital, consisting entirely of a stock of material and supplies. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Old Colony Railroad Company.

Location and general description of property.—The railroad of the Old Colony Railroad Company, herein called the Old Colony Railroad, is a standard-gage, steam railroad, located in the States of Massachusetts and Rhode Island. The principal main lines extend from Boston, Mass., to Newport, R. I.; Middleboro to Provincetown,

Mass.; and Fitchburg and Lowell to New Bedford, Mass. The mileage is classified as follows:

Classification.	First main tracks.	Second and other main tracks.	Yard tracks and sidings.	All tracks.
Owned but not used, leased to—				
The carrier—	*Miles*	*Miles*	*Miles*	*Miles*
In Massachusetts	511.402	228.572	281.492	1,021.466
In Rhode Island	18.128	1.341	13.095	32.564
Total	529.530	229.913	294.587	1,054.030
Boston and Maine Railroad—				
In Massachusetts	.....	4.060	.....	4.060
Total owned but not used	529.530	233.973	294.587	1,058.090

Jointly owned property.—The Old Colony Railroad has no jointly owned property, with the exception of minor facilities, the reproduction costs for which are included with the wholly owned property.

82 *Corporate history.*—The Old Colony Railroad was incorporated March 27, 1872, under a special act of Massachusetts and an act of Rhode Island passed at the May session of 1872. The organization was perfected on October 1, 1872. Its principal office is at Boston, Mass. Further information in regard to corporate history and the detailed facts as to the development of fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation the Old Colony Railroad has issued or assumed capital obligations to the amount of $49,798,400, of which $13,906,200 have been retired, leaving outstanding on date of valuation $35,892,200. The securities outstanding consists of $22,294,000 common stock and $13,598,200 funded debt. From the date of incorporation to date of valuation short-term notes were issued or assumed to an amount of $27,627,354.59, of which $27,624,354.59 were retired, leaving $3,000 outstanding. The considerations for which securities were issued and other facts pertinent to capitalization are given in Appendix 2.

The carrier is the largest single stockholder and owns 44 per cent of the capital stock of the Old Colony Railroad.

Gross and net earnings.—The result of corporate operations of the Old Colony Railroad from October 1, 1872, to date of valuation is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)		$94,641,003.01
Operating expenses (railway operating expenses)		64,333,509.25
Resulting in net earnings (net revenue from railway operations) of		30,307,493.76
During the same period taxes assessed (railway tax accruals) amounted to		4,598,563.41
Resulting in an income from railway operations (railway operating income) of		25,708,930.35
In addition to this there were revenues from miscellaneous operations of	$382,465.98	
Also income from nonoperating sources (nonoperating income) of	45,296,374.38	
		45,678,840.36
Resulting in gross income for the period (gross income) of		71,387,770.71
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to		5,871,290.84
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income) of		65,516,479.87

Dividends amounting to $40,612,662.80 have been appropriated from income, as follows: 6 per cent in 1876,
83 1877, 1878, 1880, and 1881; 6.4 per cent in 1892; 6.5 per cent in 1882; 7 per cent from 1873 to 1875, 1883 to 1891, and 1894 to 1915; 7.583 per cent in 1893. No dividend was paid in 1879.

General balance sheet.—The general balance sheet stated by the Old Colony Railroad, as showing its financial condition on date of valuation, follows:

Assets

Investments:		
Investment in road and equipment	$42,348,414.30	
Sinking funds	211,748.07	
Investments in affiliated companies, stock	147.50	
Other investments—		
Stock	180,625.42	
Bonds	3,600,000.00	
		$46,340,935.29
Current assets:		
Cash	493,621.24	
Loans and bills receivable	23,616.73	
Miscellaneous accounts receivable	5,377.84	
Rents receivable	68,660.00	
		591,275.81
Total		46,932,211.10

Liabilities

Stock:		
Capital stock	22,294,000.00	
Stock liability for conversion	1,125.00	
Premium on capital stock	6,836,173.84	
		29,131,298.84
Long-term debt: Funded debt unmatured		13,598,000.00

Current liabilities:		
Loans and bills payable	3,000.00	
Miscellaneous accounts payable	6,818.48	
Interest matured unpaid	100,685.40	
Dividends matured unpaid	400,548.72	
Funded debt matured unpaid	200.00	
Unmatured interest accrued	68,660.00	
Other current liabilities	532,543.67	
		1,112,456.27
Unadjusted credits:		
Premium on funded debt	79,293.08	
Other unadjusted credits	18,834.69	
		98,127.77
Corporate surplus:		
Sinking-fund reserves	211,748.07	
Profit and loss credit balance	2,780,580.15	
		2,992,328.22
Total		46,932,211.10

Investment in road and equipment.—The investment in road and equipment, including land, on date of valu-
84 ation, is stated on the books of the Old Colony Railroad to be $42,348,414.30. If certain readjustments were made, as detailed in Appendix 2, this amount would be reduced to $35,679,130.01, representing investment in road only, of which $16,611,945 represents par value of securities, the value of which at the time of entry upon the books we are unable to report, because it has been impossible to obtain the necessary information.

Original cost to date.—The original cost to date of all common-carrier property owned by the Old Colony Railroad can not be ascertained, for the reason that the records are not obtainable. In Appendix 2 will be found certain information respecting outlay to create and improve the property, and, separately considered, the cost of equipment and lands.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Old Colony Railroad, including its portion of jointly owned minor facilities, are as follows:

Classification	Cost of reproduction new	Cost of reproduction less depreciation
As a whole		
Owned but not used, leased to—		
The carrier	$43,288,091	$34,956,629
The New England Steamship Company	1,357,573	861,938
New Bedford, Martha's Vineyard and Nantucket Steamboat Company	38,457	16,459
Boston and Maine Railroad	64,022	48,124
Total	44,748,143	35,883,150
In Massachusetts		
Owned but not used, leased to—		
The carrier	41,558,441	33,644,385
The New England Steamship Company	817,821	513,442
New Bedford, Martha's Vineyard and Nantucket Steamboat Company	38,457	16,459
Boston and Maine Railroad	64,022	48,124
Total	42,478,741	34,222,410
In Rhode Island		
Owned but not used, leased to—		
The carrier	1,729,650	1,312,244
The New England Steamship Company	539,752	348,496
Total	2,269,402	1,660,740

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by the Old Colony Railroad and used by the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given
85 in Appendix 2. The classification, area, and present value of these lands are as follows:

Classification.	Acres.	Present value.
As a whole.		
Owned but not used, leased to—		
The carrier	7,670.68	$11,729,396.79
The New England Steamship Company	15.77	552,736.55
New Bedford, Martha's Vineyard and Nantucket Steamboat Company	0.25	14,512.50
Boston and Maine Railroad	18.95	2,545.70
Total	7,705.65	12,299,191.54

Classification.	Acres.	Present value.
As a whole.		
In Massachusetts		
Owned but not used, leased to—		
The carrier	7,427.11	11,058,156.82
The New England Steamship Company	9.28	411,395.55
New Bedford, Martha's Vineyard and Nantucket Steamboat Company	0.25	14,512.50
Boston and Maine Railroad	18.95	2,545.70
Total	7,455.59	11,486,610.57
In Rhode Island		
Owned but not used, leased to—		
The carrier	243.57	671,239.97
The New England Steamship Company	6.49	141,341.00
Total	250.06	812,580.97

In addition to the carrier lands owned, the Old Colony Railroad has 0.14 acre of land, present value $2,100, which it leases from a private party and subleases to the carrier; and also 0.82 acre of lands, present value $17,841.50, which it leases from a private party and subleases to the carrier, which, in turn, subleases it to The New England Steamship Company.

Rights in private lands.—The Old Colony Railroad owns rights in private lands of total present value $4,123.93, of which $3,673.93 represents rights in Massachusetts and $450 rights in Rhode Island, all of which are leased to and used by the carrier.

Property held for purposes other than those of a common carrier.—Incomplete information on the original cost of lands wholly owned by the Old Colony Railroad and held by the carrier for noncarrier purposes is given in Appendix 2. The present value of noncarrier lands, including the value of improvements thereon, together with the present value of noncarrier structures situated on carrier land, is shown as follows:

State	Acres	Present value.	
		Noncarrier lands, including improvements thereon	Noncarrier structures on carrier lands
Massachusetts	3,008.97	$1,907,372.32	$26,560.00
Rhode Island	56.22	115,267.20	1,150.00
Total	3,065.19	2,022,639.52	27,710.00

86 The Old Colony Railroad owns securities of other companies with a par value of $3,845,500 and book

value of $3,780,772.92. The income therefrom accrues to the carrier. Further details with regard to these securities will be found in Appendix 2.

Aids, gifts, grants of rights of way, and donations.—Some of the lands of the Old Colony Railroad are reported by it as having been acquired through aids. In addition, other lands were acquired through deeds reciting nominal considerations or no consideration. The latter have been classified by us as apparent aids. The value of the above lands at the time acquired can not be accurately determined. Their classification, area, and present value are as follows:

State.	Carrier land.		Noncarrier land.	
	Acres.	Present value.	Acres.	Present value.
Massachusetts	303.78	$374,909.35	6.64	$20,356.67
Rhode Island	132.42	305,808.40	.....	.....
Total	436.20	620,717.75	6.64	20,356.67

The above totals are included in the preceding summaries of lands owned.

In addition, the Old Colony Railroad reports aids were received by its predecessors as follows:

By the Old Colony Railroad Company (of 1854), cash from certain citizens of North Quincy, Mass	$1,500
By the Boston, Clinton and Fitchburg Railroad Company, cash from unknown donors	531
By the Old Colony and Newport Railway Company:	
5 per cent bonds of city of Newport, R. I.	10,000
6 per cent demand note of city of Newport, R. I.	10,000

Further, the towns along the route of the Duxbury and Cohasset Railroad Company purchased its stock for cash in the amounts as follows:

Duxbury, Mass	$75,000
Marshfield, Mass	75,000
Plymouth, Mass	40,000
Scituate, Mass	75,000

Material and supplies.—The Old Colony Railroad had no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the values for rate-making purposes, of the property of the Old
87 Colony Railroad, owned but not used, devoted to common-carrier purposes, are found to be as follows:

Owned but not used, leased to—	
The carrier	$48,250,000
The New England Steamship Company	1,460,000
New Bedford, Martha's Vineyard and Nantucket Steamboat Company	32,000
Boston and Maine Railroad	53,000
Total	49,795,000

No working capital, including material and supplies, is found to be owned and used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Boston and Providence Railroad Corporation (Mass.).

Location and general description of property.—The railroad of Boston and Providence Railroad Corporation (Mass.), herein called the Boston and Providence (Mass.), is a standard-gage, steam railroad, located in the States of Massachusetts and Rhode Island. Its principal main line extends from Boston, Mass., to East Providence, R. I. The mileage is classified as follows:

Classification.	First main track.	Second and other main tracks.	Yard tracks and sidings.	All tracks.
Owned but not used, leased to the carrier:	*Miles.*	*Miles.*	*Miles.*	*Miles.*
In Massachusetts	53.435	71.560	60.212	185.207
In Rhode Island	4.605	1.058	2.331	7.994
Total	58.040	72.618	62.543	193.201

All of the property of the Boston and Providence (Mass.) is operated by the carrier, as lessee through the Old Colony Railroad.

Jointly owned property.—The Boston and Providence (Mass.) has no jointly owned property, with the exception of jointly owned minor facilities, the reproduction costs for which are included with the wholly owned property.

Corporate history.—The Boston and Providence (Mass.) was incorporated June 22, 1831, under a special law of Massachusetts, and its organization was perfected July 11, 1831. The principal office is at Boston, Mass. Further information in regard to corporate history and the detailed facts as to the development of fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—Railroad Corporation. From the date of its

incorporation to date of valuation the Boston and
88 Providence (Mass.) has issued capital obligations to the amount of $7,280,220, of which $1,110,220 has been retired, leaving outstanding on date of valuation $6,170,000. The securities outstanding consist of $4,000,000 par value of common stock, of which $4,000 par value is held by the Boston and Providence (Mass.), and $2,170,000 par value funded debt. The considerations for which securities were issued and other facts pertinent to capitalization are given in Appendix 2. The carrier is the largest single stockholder, holding 5,246 shares out of a total of 40,000 shares of the outstanding capital stock.

Gross and net earnings.—The result of the corporate operations of the Boston and Providence (Mass.) for the period from June 4, 1834, to date of valuation, is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)	$46,973,681.07
Operating expenses (railway operating expenses)	30,229,311.00
Resulting in net earnings (net revenue from railway operations) of	16,744,370.07
During the same period taxes assessed (railway tax accruals) amounted to	2,326,873.81
Resulting in an income from railway operations (railway operating income) of	14,417,496.26
In addition to this there were revenues from nonoperating sources (nonoperating income) of	14,705,397.96
Resulting in gross income for the period (gross income) of	29,122,894.22
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to	391,493.67
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income) of	28,731,400.55

Dividends on its capital stock have been paid by the Boston and Providence (Mass.) in each year, beginning with 1835, except 1855, as follows:

Years.	Per cent.
1851, 1854	3.0
1835, 1836	4.0
1850, 1856	5.5
1842 to 1844, 1849, 1857, 1858, 1877, 1878	6.0
1853, 1879	6.5
1840, 1841, 1845, 1859	7.0
1846, 1847, 1889	7.5
1837 to 1839, 1860 to 1863, 1868, 1876, 1880 to 1885	8.0
1852, 1886	8.5
1864, 1875	9.0
1848, 1865 to 1867, 1869 to 1874, 1887, 1888, 1890 to 1915	10.0

This was at an average rate per annum of 8.3 per cent. In addition to these dividends, the Boston and Providence (Mass.) distributed to its stockholders $1,300,000
89 which was received from the Old Colony Railroad as a bonus in connection with leasing its road and equipment to that company in 1888, being 32.5 per cent on the capital stock of the company. Including this dividend, the average annual rate of dividends paid has been 8.7 per cent.

General balance sheet.—The general balance sheet stated by the Boston and Providence (Mass.), as showing its financial condition on date of valuation follows.

Assets.

Investment:		
Investment in road and equipment	$5,673,198.59	
Miscellaneous physical property	82,183.94	
Investments in affiliated companies, stock	337,519.42	
		$6,092,901.95
Current assets:		
Cash	49,024.64	
Special deposits	102,724.50	
Miscellaneous accounts receivable	152,224.65	
		303,973.79
Total		6,396,875.74

Liabilities.

Stock:		
Book liability	4,000,000.00	
Held by the Boston and Providence (Mass.). Actually outstanding	4,000.00	
		3,996,000.00
Long-term debt: Funded debt unmatured		2,170,000.00
Current liabilities:		
Interest matured unpaid	44,740.00	
Dividends matured unpaid	102,724.50	
Other current liabilities	83,411.24	
		230,875.74
Corporate surplus: Profit and loss credit balance		83,389.64
Total		6,396,875.74

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated on the books of the Boston and Providence (Mass.) to be $5,673,198.59. If certain readjustments were made, as detailed in Appendix 2, this amount would be increased to $9,168,292.43, representing investment in road only. Of this amount, $61,711.19 represents unknown considerations.

Original cost to date.—The original cost to date of all common-carrier property owned by the Boston and Providence (Mass.) can not be ascertained, for the reason that the records are not obtainable. In Appendix 2 will be found certain information respecting outlay to create and improve

the property, and, separately considered, cost of machinery and equipment and lands.

90 *Cost of reproduction new and cost of reproduction less depreciation.*—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Boston and Providence (Mass.) and leased to the carrier, including lessor's portion of jointly owned minor facilities, are as follows:

Classification.	Cost of reproduction new.	Cost of reproduction less depreciation.
Owned but not used, leased to the carrier:		
In Massachusetts	$13,289,349	$10,724,520
In Rhode Island	546,189	455,168
Total	13,835,538	11,179,688

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by the Boston and Providence (Mass.) and used by the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given in Appendix 2. The areas and present values of these lands are as follows:

	Acres.	Present value.
Owned but not used, leased to the carrier:		
In Massachusetts	720.32	$4,558,701.95
In Rhode Island	60.90	114,544.65
Total	781.22	4,673,246.60

Rights in private lands.—The Boston and Providence (Mass.) has rights in private lands of the total present value of $1,020, of which $420 represents rights in Massachusetts and $600 represents rights in Rhode Island, all of which are leased to and used by the carrier.

Property held for purposes other than those of a common carrier.—Incomplete data on the original cost of lands wholly owned by the Boston and Providence (Mass.) and held by the carrier for noncarrier purposes, is given in Appendix 2. The present value of noncarrier lands, including

the value of improvements thereon, together with the present value of noncarrier structures situated on carrier lands, is shown as follows:

91

State.	Acres.	Present value. Noncarrier lands, including improvements thereon.	Present value. Noncarrier structures on carrier lands.
Massachusetts	23.09	$202,393.97	$11,440.00
Rhode Island	3.92	13,955.76	.....
Total	27.01	216,349.73	11,440.00

Aids, gifts, grants of rights of way, and donations.—Some of the lands of the Boston and Providence (Mass.) are reported by it as having been acquired through aids. In addition, other lands are reported as having been acquired through deeds reciting nominal considerations or no consideration. The latter have been considered by us as apparent aids. The value of these lands at the time acquired could not be accurately determined. Their classification, areas, and present values are as follows:

State.	Carrier lands. Acres.	Carrier lands. Present value.	Noncarrier lands. Acres.	Noncarrier lands. Present value.
Massachusetts	12.81	$74,162.86	0.18	$831.30
Rhode Island	1.20	6,437.31	.05	151.20
Total	14.01	80,600.17	.23	982.50

These lands are included in the preceding summaries of lands owned.

Material and supplies.—The Boston and Providence (Mass.) had no materials and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, for rate-making purposes, of the property of the Boston and Providence (Mass.), owned but not used, leased to the carrier, devoted to common-carrier purposes, is found to be $16,350,000. No working capital, including material and supplies, is found to be owned or used. No other values or

elements of value to which specific sums can now be ascribed are found to exist.

Boston and Providence Railroad Corporation (R. I.).

Location and general description of property.—The railroad of the Boston and Providence Railroad Corporation (R. I.), herein called the Boston and Providence (R. I.), is a standard-gage, double-track, steam railroad, located in the State of Rhode Island. The owned property consists
92 of a bridge across the Seekonk River, some wharves at East Providence, road connecting these properties, and road from the Massachusetts State line to Boston Switch. The wholly owned mileage consists of 1.470 miles of road, 1.143 miles second and other main track, and 4.421 miles of yard tracks and sidings, aggregating 7.034 miles of all tracks.

In addition, the Boston and Providence (R. I.) owns jointly and equally with the Providence and Worcester certain tracks between Boston Switch and Providence (Smith Street). These tracks comprise 4.970 miles of first main track, 15.538 miles of second or other main tracks, and 30.908 miles of yard tracks and sidings, aggregating 51.416 miles of all tracks, undivided mileage.

All of the property of the Boston and Providence (R. I.) is operated by the carrier, as lessee through the Old Colony Railroad Company.

Jointly owned property.—The Boston and Providence (R. I.) has no jointly owned property, with the exception of that described above and certain minor facilities, the reproduction costs for which are included with the wholly owned property.

Corporate history.—The Boston and Providence (R. I.) was incorporated June 16, 1853, under a special law of Rhode Island. Its principal office is at Providence (R. I.). Further information in regard to corporate history and the detailed facts as to the development of fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation the Boston and Providence (R. I.) has issued capital obligations to the amount of $168,000, of which $18,000 has been retired, leaving outstanding on date of valuation $150,000 capital stock. The considerations for which securi-

ties were issued and other facts pertinent to capitalization are given in Appendix 2. Control of the Boston and Providence (R. I.) is vested in the Boston and Providence (Mass.), through ownership of all of the capital stock.

Gross and net earnings.—The result of the corporate operations of the Boston and Providence (R. I.) for the period from beginning of operations to August 31, 1863, is stated in detail in Appendix 2, and is summarized as follows:

Operating expenses (railway operating expenses)	$19,671.34
Resulting in a deficit, instead of net earnings (net revenue from railway operating, deficit), of	19,671.34
During the same period taxes assessed (railway tax accruals) amounted to	1,710.58
Resulting in a deficit, instead of income from railway operations (railway operating income, deficit) of	21,381.92
93	
Offsetting this there was income from nonoperating sources (nonoperating income) of	$275,379.13
Resulting in gross income for the period (gross income) of	253,997.21

All of which was available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income).

Dividends from income, aggregating $195,279.50, were paid by the Boston and Providence (R. I.) during the years shown, at the following rates:

Years	Per cent
1956	2.5
1843	3
1837, 1838, 1846	4
1850	5.5
1844, 1847 to 1849, 1851, 1852, 1857 to 1859	6
1854	6.5
1845	7
1853	7.5
1860 to 1863	8

General balance sheet.—The general balance sheet stated by the Boston and Providence (R. I.), as showing its financial condition on date of valuation, follows:

Assets: Investment in road and equipment	$150,000
Liabilities: Capital stock	150,000

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated on the books of the Boston and Providence (R. I.) to be $150,000. If certain readjustments were made, as detailed in Appendix 2, this amount would be reduced to $133,-

058.46, representing investment in road only, of which $1,425 represents par value of securities, the value of which at the time of entry upon the books we are not able to state, as it has been impossible to obtain the necessary information.

Original cost to date.—The original cost to date of all common-carrier property owned by the Boston and Providence (R. I.) can not be ascertained, as the records are not obtainable. In Appendix 2 will be found certain information respecting outlay to create and improve the property.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Boston and Providence (R. I.) and leased to the carrier, including lessor's portions of jointly owned minor facilities, are as follows:

Classification.	Cost of reproduction new.	Cost of reproduction less depreciation.
Wholly owned but not used, leased to the carrier..	$1,308,329	$1,003,564
Jointly owned but not used, lessor's portion of property jointly owned with the Providence and Worcester, leased to the carrier.....	1,837,029	1,541,199
Total owned but not used.....	3,145,358	2,544,763

94 These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by the Boston and Providence (R. I.) and used by the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given in Appendix 2. The Boston and Providence (R. I.) owns 68.25 acres of lands, present value $2,335,586.71, which are leased to and used by the carrier for common-carrier purposes.

Property held for purposes other than those of a common carrier.—Incomplete data on the original cost of lands wholly owned by the Boston and Providence (R. I.) and held by the carrier for noncarrier purposes is given in Appendix 2. The Boston and Providence (R. I.) owns 2.76 acres of noncarrier lands with a present value of $57,895. It also

owns noncarrier structures located on carrier lands which have a present value of $262.50.

Aids, gifts, grants of rights of way, and donations.—The Boston and Providence (R. I.) owns 0.39 acre of carrier land and 0.12 acre of noncarrier land with present values of $2,202.26 and $11,920.50, respectively, which were acquired through aids. We are not able to report their value at the time acquired. They are included in the preceding statements of lands owned.

Material and supplies.—The Boston and Providence (R. I.) had no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value for rate-making purposes, of the property of the Boston and Providence (R. I.) owned but not used, leased to the carrier, devoted to common-carrier purposes, is found to be $5,000,000. No working capital, including material and supplies is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Providence, Warren and Bristol Railroad Company.

Location and general description of property.—The railroad of the Providence, Warren and Bristol Railroad Company, herein called the Providence, Warren and Bristol, is a standard-gage steam railroad, located in the State of Rhode Island. The owned mileage extends from India Street, in Providence, to Bristol and consists of
95 14.419 miles of first main track, 9.517 miles of second and other main tracks, and 7.678 miles of yard tracks and sidings, aggregating 31.614 miles of all tracks. All of this property is operated by the carrier, as lessee through the Old Colony Railroad Company.

Jointly owned property.—The Providence, Warren and Bristol has no jointly owned property.

Corporate history.—The Providence, Warren and Bristol was formed November 16, 1854, under special acts of Massachusetts of May 23, 1851, and of Rhode Island of November 1, 1850. Further information in regard to cor-

porate history and the detailed facts as to the development of fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation the Providence, Warren and Bristol has issued capital obligations to the amount of $1,476,997.30, of which $250,000 has been retired, leaving outstanding on date of valuation $1,226,997.30. The securities outstanding consist of $724,600 common stock, $150,000 preferred stock, and $352,397.30 nonnegotiable debt. The considerations for which securities were issued and other facts pertinent to capitalization are given in Appendix 2. The carrier owns a majority of the capital stock of this company.

Gross and net earnings.—The result of corporate operations of the Providence, Warren and Bristol for the period from July 12, 1855, to date of valuation, is stated in detail in Appendix 2, and is summarized as follows:

Gross earning (railway operating revenues)	$3,180,264.89
Operating expenses (railway operating expenses)	2,594,402.53
Resulting in net earnings (net revenue from railway operations) of	585,862.36
During the same period taxes assessed (railway accruals) amounted to	84,554.08
Resulting in an income from railway operations (railway operating income) of	501,308.28
In addition to this there were revenues from nonoperating sources (nonoperating income) of	808,383.01
Resulting in gross income for the period (gross income) of	1,309,691.29
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to	34,025.04
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income), of	1,275,666.25

96 Dividends amounting to $992,446 were paid, of which $898,927.76 was charged to income, $68,175.08 to profit and loss, and $25,343.16 to investment in road and equipment. Annual dividends paid on the preferred stock were at the rate of 6 per cent from 1861 to 1891 and from 1902 to 1915, and 5 per cent from 1892 to 1901. The annual dividends paid on the common stock were at the rate of 5 per cent from 1892 to 1901 and 6 per cent from 1902 to 1915.

General balance sheet.—The general balance sheet stated by the Providence, Warren and Bristol as showing its financial condition on date of valuation, follows.

Assets.		
Investments: Investment in road and equipment		$1,467,140.09
Current assets: Cash		30,924.72
Total		1,498,064.81
Liabilities.		
Stock:		
Capital stock	$874,600.00	
Premium on capital stock	218,650.00	
		1,093,250.00
Long-term debt: Nonnegotiable debt to affiliated companies		352,397.30
Current liabilities: Dividends matured unpaid		28,460.50
Corporate surplus: Profit and loss credit balance		23,957.01
Total		1,498,064.81

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated on the books of the Providence, Warren and Bristol to be $1,467,140.09. If certain readjustments were made, as detailed in Appendix 2, this amount would be increased to $1,645,807.64, representing investment in road only. Of this amount, $23,758.20 represents par value of securities, the value of which at the time of entry upon the books we are not able to report, as it has been impossible to obtain the necessary information, and $396,288.16 represents considerations not of record.

Original cost to date.—The original cost to date of all common-carrier property owned by the Providence, Warren and Bristol can not be fully ascertained. In Appendix 2 will be found certain information respecting outlay in creating and improving the property, exclusive of equipment, and, separately considered, the cost of machinery and lands.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Providence,
97 Warren and Bristol and leased to the carrier, including lessor's portions of jointly owned minor facilities, are as follows:

Classification.	Cost of reproduction new.	Cost of reproduction less depreciation.
Owned but not used, leased to the carrier:		
In Massachusetts	$43,238	$28,713
In Rhode Island	1,953,780	1,566,084
Total	1,997,018	1,594,797

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by the Providence, Warren and Bristol can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given in Appendix 2. The present value of 171.34 acres of lands, in Rhode Island, owned by the company and used by the carrier for common-carrier purposes, is $297,732.97.

Rights in private lands.—The Providence, Warren and Bristol owns rights in private lands, in Rhode Island, which were acquired at a cost of $100. Their present value is $10. These rights are leased to and used by the carrier.

Property held for purposes other than those of a common carrier.—The Providence, Warren and Bristol owns 2.26 acres of noncarrier lands in Rhode Island. Incomplete data as to the cost of these lands will be found in Appendix 2. Their present value, including the value of improvements thereon, is $17,655.05. It also owns noncarrier structures located on carrier lands, with a present value of $600.

Aids, gifts, grants of rights of way, and donations.—The Providence, Warren and Bristol reports that it received no aids, gifts, grants, or donations. Included in its return of lands are certain lands acquired by deeds citing nominal considerations only. These lands are treated as apparent aids. We are not able to report their value at time acquired. These lands comprise 1.22 acres, in Rhode Island, with a present value of $1,519.89, and are included in the preceding statement of carrier lands owned.

Material and supplies.—The Providence, Warren and Bristol had no material and supplies on hand on date of valuation.

98 *Final value.*—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, for rate-making purposes, of the property of the Providence, Warren and Bristol, owned but not used, leased to the carrier, devoted to common-carrier purposes, is found to be $2,025,000. No working capital, in-

cluding material and supplies, is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

The Harlem River and Port Chester Railroad Company.

Location and general description of property.—The railroad of The Harlem River and Port Chester Railroad Company, herein called the Harlem River and Port Chester, is a standard-gage, steam railroad, located entirely in the State of New York. The owned mileage extends from the Harlem River to New Rochelle, and consists of 11.217 miles of first main track, 52.218 miles of second and other main tracks and 101.337 miles of yard tracks and sidings, aggregating 164.772 miles of all tracks. Practically all of the property of the Harlem River and Port Chester is leased to and operated by the carrier.

Jointly owned property.—The Harlem River and Port Chester has no jointly owned property, with the exception of minor facilities, the reproduction costs for which are included with the wholly owned property.

Corporate history.—The Harlem River and Port Chester was incorporated in New York under an act passed in 1866 and an act passed April 2, 1850. Its principal office is at New York, N. Y. The accounts are kept in the office of the carrier at New Haven, Conn. Further information in regard to corporate history and the detailed facts as to the development of fixed physical property are given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation The Harlem River and Port Chester has issued capital obligations to the amount of $59,575,285.95, of which $30,575,285.95 has been retired, leaving outstanding on date of valuation, $29,000,000. The securities outstanding consist of $1,000,000 capital stock, $13,000,000 funded debt, and $15,000,000 short-term notes. The carrier owns all of the capital stock. The considerations for which securities were issued and other facts pertinent to capitalization are given in Appendix 2.

Gross and net earnings.—The result of the corporate operations of the Harlem River and Port Chester
99 for the period from June, 1868, to date of valuation, is stated in detail in Appendix 2, and is summarized

as $11,940,630.16 of revenues from nonoperating sources, all of which was available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income). During the period above stated The Harlem River and Port Chester paid dividends aggregating $894,283.80, of which amount $70,000, representing a 7 per cent dividend on $1,000,000 capital stock, was paid during the year ended on date of valuation. The dividend rates for other years have not been ascertained.

General balance sheet.—The general balance sheet stated by The Harlem River and Port Chester as showing its financial condition on date of valuation, follows:

Assets.

Investments: Investment in road and equipment		$28,984,969.75
Current assets:		
Cash	$5,902.60	
Miscellaneous accounts receivable	53,137.42	
Rents receivable	243,333.34	
		302,373.36
Total		29,287,343.11

Liabilities.

Stock: Capital stock		1,000,000.00
Long-term debt: Funded debt unmatured		13,000,000.00
Current liabilities:		
Loans and bills payable	15,000,000.00	
Audited accounts and wages payable	44,009.77	
Interest matured unpaid	135,000.00	
Unmatured interest accrued	108,333.34	
		15,287,343.11
Total		29,287,343.11

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated on the books of the Harlem River and Port Chester to be $28,984,969.75. If certain readjustments were made, as detailed in Appendix 2, this amount would be reduced to $25,631,396.45, representing investment in road only, of which $305,250 represents par value of securities, the value of which at the time of entry upon the books we are not able to report, as it has been impossible to obtain the necessary information.

Original cost to date.—The original cost to date of all common-carrier property of The Harlem River and Port Chester can not be ascertained, for the reason that the

records are not obtainable. In Appendix 2 will be
100 found certain information respecting outlay to create and improve the property, excepting equipment, and, separately considered, the cost of lands.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned but not used by The Harlem River and Port Chester, including lessor's portions of jointly owned minor facilities, are as follows:

Classification.	Cost of reproduction new.	Cost of reproduction less depreciation.
Owned but not used, leased to—		
The carrier	$18,179,206	$15,857,588
Interborough Rapid Transit Company	7,300	4,101
Total	18,186,506	15,861,689

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by The Harlem River and Port Chester can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given in Appendix 2. The present value of 481.61 acres of lands owned by this company and leased to the carrier for common-carrier purposes is $13,732,443.88.

Property held for purposes other than those of a common carrier.—Incomplete information on the original cost of lands wholly owned by The Harlem River and Port Chester and held by the carrier for noncarrier purposes is given in Appendix 2. The area and present value of noncarrier lands, including the value of improvements thereon, are 73.73 acres and $1,393,885.09, respectively.

Aids, gifts, grants of rights of way, and donations.—The Harlem River and Port Chester owns certain common-carrier lands which it reported as aids or donations. These lands comprise 15.32 acres, with a present value of $173,904.90. We are not able to report their value at the time acquired. They are included in the preceding statement of carrier lands owned.

Material and supplies.—The Harlem River and Port Chester had no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the
101 values for rate-making purposes, of the property of The Harlem River and Port Chester, owned but not used, devoted to common-carrier purposes, are found to be as follows:

Owned but not used, leased to—	
The carrier	$30,150,000
Interborough Rapid Transit Company	4,500
Total	30,154,500

No working capital, including material and supplies, is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Holyoke and Westfield Railroad Company.

Location and general description of property.—The railroad of the Holyoke and Westfield Railroad Company, herein called the Holyoke and Westfield, is a single-track, standard-gage, steam railroad, located entirely in the State of Massachusetts. The owned mileage extends from Holyoke to Westfield, and consists of 10.028 miles of first main track and 10.551 miles of yard tracks and sidings, aggregating 20.579 miles of all tracks. All of the property of the Holyoke and Westfield is leased to and operated by the carrier.

Jointly owned property.—The Holyoke and Westfield has no jointly owned property, with the exception of minor facilities, the reproduction costs for which are included with the wholly owned property.

Corporate history.—The Holyoke and Westfield was incorporated June 12, 1869, under a special act of Massachusetts, with principal office at Holyoke, Mass. Information in regard to development of fixed physical property is given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of

valuation the Holyoke and Westfield has issued capital obligations to the amount of $920,000, of which $460,000 has been retired, leaving outstanding on date of valuation $460,000. The securities outstanding consist of $260,000 capital stock and $200,000 funded debt. Of the funded debt, $4,000 par value has been reacquired and is held by the company. The considerations for which securities were issued and other facts pertinent to capitalization are given in Appendix 2.

The Holyoke and Westfield is controlled by the city of Holyoke, Mass., through ownership of a majority of the outstanding capital stock.

Gross and net earnings.—The result of the corporate operations for the period from October 16, 1871, to
102 date of valuation is stated in detail in Appendix 2.

The gross income, all from nonoperating sources, was $1,478,503.99, all of which was available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income).

The income account shows dividend appropriations of income aggregating $742,300. Such dividends have been paid in each year since 1879 at rates per annum ranging from 1 to 24 per cent. The current rate, 14 per cent, has been maintained since the present lease became effective, in 1908.

General balance sheet.—The general balance sheet stated by the Holyoke and Westfield as showing its financial condition on date of valuation, follows.

Assets.		
Investments: Investment in road and equipment		$460,000.00
Current assets: Cash		4,262.08
Total		464,262.08
Liabilities.		
Stock: Capital stock		260,000.00
Long-term debt:		
Funded debt unmatured	$200,000.00	
Less reacquired and held	4,000.00	
		196,000.00
Current liabilities: Unmatured interest accrued		2,082.50
Unadjusted credits: Premium on funded debt		3,700.14
Corporatae surplus: Profit and loss credit balance		2,479.44
Total		464,262.08

Investment in road and equipment.—The Holyoke and Westfield owns no equipment. The investment in road, in-

cluding land, on date of valuation, is stated on the books of the company to be $460,000. If certain readjustments were made, as detailed in Appendix 2, this amount would be increased to $515,819.10, of which $260,000 represents par value of securities, the value of which at the time of entry upon the books we are not able to report, as it has been impossible to obtain the necessary information.

Original cost to date.—The original cost to date of all common-carrier property owned by the Holyoke and Westfield can not be ascertained, as the records are not obtainable. In Appendix 2 will be found certain information respecting outlays to create and improve the property.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier
103 property, other than land, owned by the Holyoke and Westfield and leased to the carrier, including lessor's portion of jointly owned minor facilities, are $760,545 and $599,955, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The original cost of lands owned by the Holyoke and Westfield and used by the carrier for common-carrier purposes, as supported by accounting records, was $82,031.67. The company owns 138.63 acres of lands, present value $1,216,028.70, which are leased to and used by the carrier for common-carrier purposes.

Property held for purposes other than those of a common carrier.—The Holyoke and Westfield owns no non-carrier property.

Aids, gifts, grants of rights of way, and donations.—The Holyoke and Westfield reports that it received no aids, gifts, grants, or donations. The town of Holyoke was a subscriber to the capital stock of the company at the time of the latter's organization and at the date of valuation holds a majority of the shares issued. In its return of lands, the company lists certain carrier lands, the title to which was acquired through a deed which states that the parcel was acquired for "valuable consideration," but for

which payment can not be located in the accounting records. For the purposes of this report this parcel is considered as an apparent aid. The value at time acquired could not be accurately determined. These lands comprise 0.26 acre, with a present value of $7,410. These lands are included in the preceding statement of carrier lands owned.

Material and supplies.—The Holyoke and Westfield had no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, for rate-making purposes, of the property of the Holyoke and Westfield, owned but not used, leased to the carrier and devoted to common-carrier purposes, is found to be $1,850,000. No working capital, including material and supplies, is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Providence and Worcester Railroad Company.

Location and general description of property.—The railroad of the Providence and Worcester Railroad Company, herein called the Providence and Worcester, is a standard-gage, double-track, steam railroad, located in the States of Massachusetts and Rhode Island. The owned
104 mileage extends from Providence, R. I., to Worcester, Mass., with a branch line from East Providence to Valley Falls, R. I., and consists of 43.083 miles of first main track, 43.342 miles of second and other main tracks and 61.171 miles of yard tracks and sidings, aggregating 147.596 miles of all tracks.

The Providence and Worcester owns jointly with the Boston and Providence (R. I.), lessor to the carrier, each holding an undivided one-half interest, 4.970 miles of first main track, with 15.538 miles of second and other main tracks, and 30.908 miles of yard tracks and sidings, aggregating 51.416 miles of all tracks, all of which is leased to and used by the carrier. It also owns jointly with the Norwich and Worcester, a lessor to the carrier, each hold-

ing an undivided one-half interest, 0.756 mile of first main track, 2.120 miles of second and other main tracks, and 0.851 mile of yard tracks and sidings, aggregating 3.717 miles of all tracks, all of which is leased to and used by the carrier.

It also owns jointly with the Norwich and Worcester and the Boston and Maine Railroad, each holding an undivided one-third interest, 0.283 mile of first main track, 0.784 mile of second and other main tracks, and 0.085 mile of yard tracks and sidings, aggregating 1.152 miles of all tracks, which the carrier uses jointly with the Boston and Maine Railroad. These undivided joint mileages are not included in the wholly owned mileage given above. All of the property of the Providence and Worcester is leased to and operated by the carrier.

Corporate history.—The Providence and Worcester was formed November 25, 1845, under special laws of Massachusetts and Rhode Island, dated, respectively, March 12, 1844, and May 10, 1844. Further information in regard to corporate history and the development of fixed physical property is given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation the Providence and Worcester has issued capital obligations to the amount of $7,904,000, of which $2,904,000, has been retired, leaving outstanding on date of valuation $5,000,000. The securities outstanding consist of $3,500,000 capital stock and $1,500,000 funded debt. The consideration for which securities were issued and other facts pertinent to capitalization are given in Appendix 2. The Providence and Worcester is not controlled by any single interest.

Gross and net earnings.—The result of the corporate operations of the Providence and Worcester for the period from September 27, 1847, to date of valuation is stated in detail in Appendix 2 and is summarized as follows:

105

Gross earnings (railway operating revenues)	$27,158,303.20
Operating expenses (railway operating expenses)	17,575,573.38
Resulting in net earnings (net revenue from railway operations) of	9,582,729.82
During the same period taxes assessed (railway tax accruals) amounted to	992,538.50

Resulting in an income from railway operations (railway operating income) of	8,590,191.32
In addition to this there were revenues from nonoperating sources (nonoperating income) of	11,857,294.52
Resulting in gross income for the period (gross income) of	20,447,485.84
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to	340,856.56
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income), of	20,106,629.28

Taxes, 1847 to 1858, inclusive, in amount not known, were included in operating expenses.

A total of $14,998,164 was paid in dividends, of which $13,830,664, was charged to income, and $1,167,500 to profit and loss. Dividends paid in cash were: 1849, 3 per cent; 1852 and 1853, 6 per cent; 1854 and 1856, 7 per cent; 1857, 8 per cent; 1858 and 1859, 6 per cent; 1860, 7 per cent; 1861 to 1868, inclusive, 8 per cent; 1869 to 1875, inclusive, 10 per cent; 1876, 8 per cent; 1877 and 1878, 4 per cent; 1879, 5 per cent; 1880 to 1886, inclusive, 6 per cent; 1887, 9 per cent; 1888 to 1915, inclusive, 10 per cent, and extra dividends as follows: 1889, 7.5 per cent; 1893, 4.5 per cent.

General balance sheet.—The general balance sheet stated by the Providence and Worcester, as showing its financial condition on date of valuation, follows.

Assets.	
Investments: Investment in road and equipment	$5,105,137.40
Current assets: Cash	53,216.57
Deferred assets: Other deferred assets	80,747.97
Total	5,239,101.94
Liabilities.	
Stock: Capital stock	3,500,000.00
Long-term debt: Funded debt unmatured	1,500,000.00
Current liabilities: Other current liabilities	95.00
Corporate surplus: Profit and loss credit balance	239,006.94
Total	5,239,101.94

106 *Investment in road and equipment.*—The investment in road and equipment, including land, on date of valuation, is stated on the books of the Providence and Worcester to be $5,105,137.40. If certain readjustments were made, as detailed in Appendix 2, this amount would be reduced to $4,903,798.49, representing investment in road

only. Of this amount $68,177 represents par value of securities, the value of which at the time of entry upon the books we are not able to report, as it has been impossible to obtain the information.

Original cost to date.—The original cost to date of all common-carrier property owned by the Providence and Worcester cannot be ascertained as the records are not obtainable. In Appendix 2 will be found certain information respecting outlay to create and improve the property and the original cost of roadway facilities, equipment, and lands.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Providence and Worcester and leased to the carrier, including lessor's portions of jointly owned minor facilities, are as follows:

Classification.	Cost of reproduction new.	Cost of reproduction less depreciation.
As a whole.		
Wholly owned but not used, leased to the carrier	$6,699,666	$5,208,978
Jointly owned but not used:		
Lessor's portion of property jointly owned with the Norwich and Worcester and the Boston and Maine Railroad, leased to the carrier	186,120	174,679
Lessor's portion of property jointly owned with the Boston and Providence (R. I.), leased to the carrier	1,837,032	1,541,199
Total	2,023,152	1,715,878
Total owned but not used	8,722,818	6,924,856
In Massachusetts.		
Wholly owned but not used, leased to the carrier	3,063,805	2,490,654
Jointly owned but not used, lessor's portion of property jointly owned with the Norwich and Worcester and the Boston and Maine Railroad, leased to the carrier	186,120	174,679
Total owned but not used	3,249,925	2,665,333
In Rhode Island.		
Wholly owned but not used, leased to the carrier	3,635,861	2,718,324
Jointly owned but not used, lessor's portion of property jointly owned with the Boston and Providence (R. I.), leased to the carrier	1,837,032	1,541,199
Total owned but not used	5,472,893	4,259,523

These amounts, classified in conformity with the classification of expenditures for road and equipment as pre-

scribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—

107 The total original cost of lands owned by the Providence and Worcester and used by the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given in Appendix 2. The areas and present values of the lands are as follows:

	Acres.	Present value.
Owned but not used, leased to the carrier:		
In Massachusetts	367.91	$613,441.30
In Rhode Island	357.69	2,466,541.15
Total	725.60	3,079,982.45

Rights in private lands.—The Providence and Worcester owns rights in private lands with a present value of $815, of which $375 represents rights in Massachusetts and $440 represents rights in Rhode Island. These rights are leased to and used by the carrier. The original cost of these rights, as supported by accounting records, was $736.66. The Providence and Worcester claims additional costs of $1,314.60 which are not so supported.

Property held for purposes other than those of a common carrier.—Incomplete data on the original cost of lands wholly owned by the Providence and Worcester and held by the carrier for noncarrier purposes is given in Appendix 2. The area and present value of noncarrier lands, including value of improvements thereon owned by the company, are distributed as follows:

		Present value.	
State.	Acres.	Noncarrier lands, including improvements thereon.	Noncarrier structures on carrier lands.
Massachusetts	11.04	$53,385.75	$350.00
Rhode Island	35.20	257,119.82	362.50
Total	46.24	310,505.57	712.50

Aids, gifts, grants of rights of way, and donations.—The Providence and Worcester reports that it received certain lands as aids, title to same having been acquired through deeds citing nominal considerations. In addition we find

certain other lands were acquired by the company in like manner, and they are here regarded as apparent aids. We are not able to report their value at time acquired.

108 The areas and present values of these lands, classified as to use and segregated by States, are as follows:

State.	Carrier land.		Noncarrier land.	
	Acres.	Present value.	Acres.	Present value.
Massachusetts	6.61	$11,253.30	....	....
Rhode Island	3.15	6,896.99	0.12	$11,920.50
Total	9.76	18,150.29	.12	11,920.50

These lands are included in the preceding summaries of lands owned.

Materials and supplies.—The Providence and Worcester had no material and supplies on hand on date of valuation. The material and supplies on hand May 1, 1888, were estimated at an agreed value of $80,747.97, for which amount the lessee is liable at the termination of the lease. This item appears in the balance sheet as other deferred assets.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value for rate-making purposes, of the property of the Providence and Worcester, owned but not used, leased to the carrier and devoted to common-carrier purposes, is found to be $10,375,000. No working capital, including material and supplies, is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Chatham Railroad Company.

Location and general description of property.—The railroad of the Chatham Railroad Company, herein called the Chatham Railroad, is a single-track, standard-gage, steam railroad, located in the State of Massachusetts. The owned mileage extends from Harwich to Chatham and consists of 7,100 miles of first main track and 1.028 miles of yard tracks and sidings, aggregating 8.128 miles of all tracks. All of this property is leased to and operated by the carrier.

Jointly owned property.—The Chatham Railroad has no jointly owned property, with the exception of minor facili-

ties, the reproduction costs for which are included with the wholly owned property.

Corporate history.—The Chatham Railroad was incorporated February 25, 1887, under the general laws of Massachusetts, with principal office at Chatham,
109 Mass., to build a railroad from Harwich, Mass., a point on the Old Colony Railroad, to Chatham, Mass. Information in regard to the development of fixed physical property is given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation to date of valuation, the Chatham Railroad has issued capital obligations to the amount of $98,200, of which $30,000 has been retired, leaving outstanding on date of valuation $68,200 capital stock. The considerations for which securities were issued and other facts pertinent to capitalization are given in Appendix 2. The Chatham Railroad is not controlled by any single interest.

Gross and net earnings.—The result of the corporate operations of the Chatham Railroad for the period from November 21, 1887, to date of valuation is stated in detail in Appendix 2 and is summarized as follows:

During this period taxes assessed (railway tax accruals) amounted to	$4,542.89
Resulting in a deficit instead of an income from railway operations (railway operating income) of	4,542.89
In addition to this there were revenues from nonoperating sources (nonoperating income) of	101,059.39
Resulting in gross income for the period (gross income) of	96,516.50
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to	25.00
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income) of	96,491.50

Dividends have been paid in cash each year from 1900 to 1915, except 1901, 1902, and 1904, ranging from 1 to 7.5 per cent per annum.

General balance sheet.—The general balance sheet stated by the Chatham Railroad as showing its financial condition on date of valuation, follows.

Assets:	
Investment in road and equipment	$99,491.13
Cash	2,548.99
Total	102,040.12
Liabilities:	
Capital stock	68,200.00
Profit and loss, credit balance	33,840.12
Total	102,040.12

110 *Investment in road and equipment.*—The investment in road (no equipment is owned), including land, on date of valuation, is stated on the books of the Chatham Railroad to be $99,491.13, all of which represents recorded money outlay.

Original cost to date.—The original cost to date of all common-carrier property owned by the Chatham Railroad can not be ascertained, as the records are not obtainable. The recorded money outlay for the common-carrier property as a whole may be stated as $100,696.30, less certain indeterminate deductions, as indicated in Appendix 2.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, owned by the Chatham Railroad and leased to the carrier, including lessor's portions of jointly owned minor facilities, are $173,261 and $138,207, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by the Chatham Railroad and used by the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable, but the original cost of these lands, as supported by accounting records, is $5,410.31. The company owns 70.61 acres of lands, with a present value of $3,015.15, which are leased to and used by the carrier for common-carrier purposes.

Property held for purposes other than those of a common carrier.—Incomplete information on the original cost of lands wholly owned by the Chatham Railroad and held by the carrier for non-carrier purposes is given in Appendix

2. The company owns 8.56 acres of lands which we have classified as non-carrier, with a present value of $2,767.35.

Aids, gifts, grants of rights of way, and donations.—The Chatham Railroad has received no aids, gifts, grants of rights of way, or donations.

Material and supplies.—The Chatham Railroad has no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, for rate-making purposes, of the property of the Chatham Railroad, owned but not used, leased to the carrier and devoted to common-carrier purposes, is found to be
111 $150,000. No working capital, including material and supplies, is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

Norwich and Worcester Railroad Company.

Location and general description of property.—The railroad of the Norwich and Worcester Railroad Company, herein called the Norwich and Worcester, is a single-track, standard-gage, steam railroad, located within the States of Massachusetts and Connecticut, and extending from Worcester, Mass., to Groton, Conn., with a branch of about 0.22 mile in the city of Worcester, Mass. The owned mileage on date of valuation consisted of 70.545 miles of first main track, 0.431 mile of second main track, and 43.737 miles of yard tracks and sidings, aggregating 114.713 miles of all tracks.

The Norwich and Worcester owns jointly with the Providence and Worcester (lessor to the carrier), each holding an undivided half interest, 0.756 mile of first main track, 2.120 miles of second and other main track, and 0.841 mile of yard tracks and sidings, aggregating 3.717 miles of all tracks, all of which is leased to and used by the carrier. It also owns jointly with the Providence and Worcester (lessor to the carrier) and the Boston and Maine Railroad, each holding an undivided one-third interest, 0.283 mile of first main track, 0.784 mile of second and other main track, and 0.085 mile of yard tracks and sidings, aggregating

1.152 miles of all tracks, which the carrier uses jointly with the Boston and Maine Railroad. These undivided joint mileages are not included with the above wholly owned.

All of the property of the Norwich and Worcester is leased to and operated by the carrier, with the exception of certain station facilities at Norwich, Conn., which are exclusively used by the Central Vermont Railway Company.

Corporate history.—The Norwich and Worcester was incorporated June 22, 1836, under special acts of Connecticut and Massachusetts, with principal office at Worcester, Mass. Further information in regard to corporate history and the development of fixed physical property is given in Appendix 2.

History of corporate financing, capital stock, and long-term debt.—From the date of its incorporation, to date of valuation, the Norwich and Worcester has issued capital obligations to the amount of $9,152,270.59, of which $4,945,670.59 has been retired, leaving outstanding on date of valuation $4,206,600. The securities outstanding consist of $6,600 common stock, $3,000,000 preferred stock, and $1,200,000 funded debt. The consideration for which
112 securities were issued and other facts pertinent to capitalization are given in Appendix 2. The Norwich and Worcester is not controlled by any single interest.

Gross and net earnings.—The result of corporate operations of the Norwich and Worcester from March 1, 1843, the beginning of operations, to date of valuation is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)		$23,406,977.82
Operating expenses (railway operating expenses)		14,789,933.59
Resulting in an income from railway operations (railway operating income) of		8,617,044.23
In addition to this there were revenues from nonoperating sources (nonoperating income) of		707,815.31
Resulting in gross income for the period (gross income) of		9,324,859.54
During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to		301,263.08
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income) of		9,023,596.46

Dividends aggregating $240,000 have been declared. The first dividend, 3 per cent, was paid in 1844. During the following 71 years dividends were paid in all but 13

years. In 1886, 8 per cent was paid and this rate has been maintained to date of valuation. Dividends were paid in interest-bearing script in 1855 at rate of 2.5 per cent and in 1856 at 2 per cent.

General balance sheet.—The general balance sheet stated by the Norwich and Worcester as showing its financial condition on date of valuation, follows.

Assets.

Investments:		
Investment in road and equipment	$5,417,182.82	
Miscellaneous physical property	3,107.08	
Investments in other companies, bonds	675,000.00	
		$6,095,289.90
Current assets:		
Cash	107,256.07	
Special deposits	184.20	
Miscellaneous accounts receivable	16,000.00	
		123,440.27
Total		6,218,730.17

113

Liabilities.

Stock: Capital stock		$3,006,600.00
Long-term debt: Funded debt		1,200,000.00
Current liabilities:		
Miscellaneous accounts payable	$819,810.44	
Interest matured unpaid	180.00	
Dividends matured unpaid	63,259.00	
Unmatured interest accrued	16,000.00	
Other current liabilities	4.20	
		899,253.64
Corporate surplus: Profit and loss credit balance		1,112,876.53
Total		6,218,730.17

Investment in road and equipment.—The investment in road and equipment, including land, on date of valuation, is stated on the books of the Norwich and Worcester to be $5,417,182.82. If certain readjustments were made, as detailed in Appendix 2, this amount would be reduced to $4,071,661.25, representing investment in road only, all of which represents recorded money outlay.

Original cost to date.—The original cost to date of all common-carrier property owned by the Norwich and Worcester can not be ascertained, as the records are not available. In Appendix 2 will be found certain information respecting outlay to create and improve the property and the original cost of equipment and lands.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier prop-

erty, other than land owned by the Norwich and Worcester and leased to other carriers, including lessor's portions of jointly owned minor facilities, are as follows:

Classification.	Cost of reproduction new.	Cost of reproduction less depreciation.
As a whole.		
Wholly owned but not used, leased to—		
The carrier	$5,445,256	$4,427,388
Central Vermont Railway Company	42,438	31,719
Total	5,487,694	4,459,107
Jointly owned but not used, lessor's portion of property jointly owned with the Providence and Worcester and the Boston and Maine Railroad, leased to the carrier	186,120	174,677
Total owned but not used	5,673,814	4,633,784
In Massachusetts.		
Wholly owned but not used, leased to the carrier	1,509,954	1,248,684
Jointly owned but not used, lessor's portion of property jointly owned with the Providence and Worcester and the Boston and Maine Railroad, leased to the carrier	186,120	174,677
Total owned but not used	1,696,074	1,423,361
In Connecticut.		
Wholly owned but not used, leased to—		
The carrier	3,935,302	3,178,704
Central Vermont Railway Company	42,438	31,719
Total	3,977,740	3,210,423

114 These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in summary sheets in Appendix 1.

Cost of lands, rights of way, and terminals at time of dedication to public use, and their present value.—The total original cost of lands owned by the Norwich and Worcester and used by the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable. Incomplete information respecting the original cost of these lands is given in Appendix 2. The areas and present values of the lands owned by this company and used by other carriers are as follows:

Classification.	Acres.	Present value.
As a whole.		
Owned but not used, leased to—		
The carrier	836.78	$1,283,914.37
Central Vermont Railway Company	.18	3,577.50
Total	836.96	1,287,491.87

Classification.	Acres.	Present value.
As a whole.		
In Massachusetts.		
Owned but not used, leased to the carrier	184.02	630,355.50
In Connecticut.		
Owned but not used, leased to—		
The carrier	652.76	653,558.87
Central Vermont Railway Company	.18	3,577.50
Total	652.94	657,136.37

Property held for purposes other than those of a common carrier.—Incomplete data on the original cost of lands wholly owned by the Norwich and Worcester and held by the carrier for noncarrier purposes is given in Appendix 2. The present value of noncarrier lands, including value of improvements thereon owned by the company, is classified as follows:

State.	Acres.	Present value.	
		Noncarrier lands, including improvements thereon.	Noncarrier structures on carrier lands.
Massachusetts	1.82	$183,416.00	$125.00
Connecticut	46.59	125,449.85	100.00
Total	48.41	308,865.85	225.00

115 *Aids, gifts, grants of rights of way, and donations.*—The Norwich and Worcester reports that it received certain lands as aids, title to same having been acquired through deeds citing nominal considerations. In addition we find certain other lands were acquired by the company in like manner, and they are here regarded as apparent aids. We are not able to report the value of these lands at the time acquired. Their classification, area, and present value are as follows:

State.	Carrier land.		Noncarrier land.	
	Acres.	Present value.	Acres.	Present value.
Massachusetts	2.62	$21,586.78	....	.....
Connecticut	54.46	8,720.43	1.05	$525.50
Total	57.08	30,307.21	1.05	525.50

These lands are included in the preceding summaries of lands owned.

The Commonwealth of Massachusetts and the city of Norwich, Conn., lent their credit to the Norwich and Worcester in the form of certificates of debt. It is not of record that the company incurred any obligation except the obligation

to pay the interest and principal of the certificates. The Massachusetts loan was retired in 1877 from the proceeds of a sinking fund established by annual appropriations of surplus, the accretions thereto, and the cash premium of $20,000 realized upon the renewal of the loan.

Material and supplies.—The Norwich and Worcester had no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the values, for rate-making purposes, of the property of the Norwich and Worcester, owned but not used, devoted to common-carrier purposes, are found to be as follows:

Owned but not used, leased to—	
The carrier	$6,150,000
Central Vermont Railway Company	37,000
Total	6,187,000

No working capital, including material and supplies, is found to be owned or used. No other values or elements of value to which specific sums can now be ascribed are found to exist.

116 In General.

With respect to each of the carriers embraced in this proceeding, in addition to the other matters stated, the following paragraphs apply as a part of each respective valuation:

Appendixes.—Attached hereto and made a part hereof are Appendixes 1 and 2. Appendix 1 gives the explanatory text and summary sheets showing allocation of mileage by States and the classification of the cost of reproduction new, and cost of reproduction less depreciation, above set forth, in conformity with the classification of expenditures for road and equipment prescribed by us. Appendix 2 shows further details as to corporate history, development of fixed physical property; history of corporate financing; gross and net earnings; investment in road and equipment; original cost to date; improvements on leased railway property; miscellaneous physical property; investments in other companies; aids, gifts, grants, and donations; and leased railway property, excepting those features hereinbefore treated.

Reference is made to Appendix 3, *Texas Midland Railroad*, 75 I. C. C. 1, 108, which is hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported. Reference is also made, in like manner, to *Appendix 3, Northampton & B. R. Co.*, 149, I. C. C. 244, 263, for a statement of the methods employed in determining working capital.

The engineering, land, and accounting reports, copies of which have been furnished to interested parties, and the State officials of the States in which the carriers embraced in this proceeding are situated, give the details respecting the figures here reported, and are on file in the Bureau of Valuation of the commission, open to public inspection, and subject to the direction of Congress. These reports are referred to for greater particularity as to the matters herein stated.

By the commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

APPENDIX 1.

The Carrier and Its Leased Lines.

Track Mileage.

The track mileage of the carrier and its leased lines is classified in the following table:

117 Classification.	First main track.	Second and other main tracks.	Yard tracks and sidings.	All tracks.
As a whole.	*Miles.*	*Miles.*	*Miles.*	*Miles.*
Wholly owned and used	1,215.067	577.816	811.457	2,604.340
Owned but not used, leased to—				
Central New England Railway Company	34.984	33.403	22.070	90.457
Boston and Maine Railroad	0.176	.....	0.082	0.258
Total	35.160	33.403	22.152	90.715
Used but not owned, leased from—				
Old Colony Railroad	529.530	229.913	294.587	1,054.030
Boston and Providence (Mass.)	58.040	72.618	62.543	193.201
Boston and Providence (R. I.)	1.470	1.143	4.421	7.034
Providence, Warren and Bristol	14.419	9.517	7.678	31.614
Harlem River and Port Chester	11.217	52.218	101.337	164.772
Holyoke and Westfield	10.028	.....	10.551	20.579
Providence and Worcester	43.083	43.342	61.171	147.596
Chatham Railroad	7.100	.....	1.028	8.128
Norwich and Worcester	70.545	0.431	43.737	114.713
Boston and Providence (R. I.) and the Providence and Worcester, jointly	4.970	15.538	30.908	51.416
Providence and Worcester and the Norwich and Worcester, jointly	0.756	2.120	0.841	3.717
Total	751.158	426.840	618.802	1,796.800
Total wholly owned	1,250.227	611.219	833.609	2,695.055
Total wholly used	1,966.225	1,004.656	1,430.259	4,401.140
Jointly used but not owned, leased from the Providence and Worcester and the Norwich and Worcester, used jointly by the carrier and the Boston and Maine Railroad	0.283	0.784	0.085	1.152

In Connecticut.				
Wholly owned and used	819.636	423.517	535.961	1,779.114
Owned but not used, leased to the Central New England Railway Company	5.081	5.080	1.957	12.118
Used but not owned, leased from the Norwich and Worcester	53.681	.....	31.300	84.981
Total owned	824.717	428.597	537.918	1,791.232
Total used	873.317	423.517	567.261	1,864.095
In Massachusetts.				
Wholly owned and used	248.510	63.023	178.994	490.527
Owned but not used, leased to the Boston and Maine Railroad	0.176	.....	0.082	0.258
Wholly used but not owned, leased from—				
Old Colony Railroad	511.402	228.572	281.492	1,021.466
Boston and Providence (Mass.)	53.435	71.560	60.212	185.207
Holyoke and Westfield	10.028	.....	10.551	20.579
Providence and Worcester	25.288	25.707	26.431	77.426
Chatham Railroad	7.100	.....	1.028	8.128
Norwich and Worcester	16.864	0.431	12.437	29.732
Providence and Worcester and the Norwich and Worcester, jointly	.756	2.120	.841	3.717
Total	624.873	328.390	392.992	1,346.255
Total owned	248.686	63.023	179.076	490.785
Total used	873.383	391.413	571.986	1,836.782
Jointly used but not owned, leased from the Providence and Worcester and the Norwich and Worcester and used jointly by the carrier and the Boston and Maine Railroad	0.283	0.784	0.085	1.152
In New York.				
Wholly owned and used	14.126	41.377	15.643	71.146
Owned but not used, leased to the Central New England Railway Company	29.903	28.323	20.113	78.339
Used but not owned, leased from the Harlem River and Port Chester	11.217	52.218	101.337	164.772
Total owned	44.029	69.700	35.756	149.485
Total used	25.343	93.595	116.980	235.918

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Classification. *As a whole.* *In Rhode Island.*	First main track.	Second and other main tracks.	Yard tracks and sidings.	All tracks.
	Miles.	*Miles.*	*Miles.*	*Miles.*
Wholly owned and used	132.795	49.899	80.859	263.553
Used but not owned, leased from—				
Old Colony Railroad	18.128	1.341	13.095	32.564
Boston and Providence (Mass.)	4.605	1.058	2.331	7.994
Boston and Providence (R. I.)	1.470	1.143	4.421	7.034
Providence, Warren and Bristol	14.419	9.517	7.678	31.614
Providence and Worcester	17.795	17.635	34.740	70.170
Boston and Providence (R. I.) and the Providence and Worcester, jointly	4.970	15.538	30.908	51.416
Total	61.387	46.232	93.173	200.792
Total owned	132.795	49.899	80.859	263.553
Total used	194.182	96.131	174.032	464.345

The lines from the Connecticut-New York State line to Hopewell Junction, N. Y., and from Wicopee Junction, N. Y., to Beacon, N. Y., are included in this report under the corporate ownership of the carrier. These lines were formerly a portion of the property of The New England Railroad Company, being all of its line in the State of New York. In 1908, The New England Railroad Company deeded all of its property and franchise to the carrier. The Public Service Commission of the State of New York has never approved this and in consequence the conveyance has been considered as having no legal force or effect in New York State. These lines are, however, actually in possession of the carrier by virtue of a lease for 99 years, dating from July 1, 1898.

Electrically operated road.—The carrier operates electrically or jointly with steam-road mileage according to the following tabulation:

	Mileage.
Woodlawn Junction, N. Y., and Cedar Hill, Conn	62.5
Harlem River, New York City and New Rochelle, N. Y	11.9
Stamford, Conn., and New Canaan, Conn	7.2
South Norwalk, Conn., and Wilson's Point, Conn	1.4
Berlin, Conn., Westfield, Conn., and Middletown, Conn	9.7
Melrose, Conn., Vernon, Conn., and Rockville, Conn	11.4
Manufacturer's Railroad in New Haven, Conn	1.4
Providence, R. I., Warren, R. I., and Fall River, Mass	19.6
Warren, R. I., and Bristol, R. I	4.9
Nantasket Junction, Mass., and Pemberton, Mass	6.9
Meriden, Conn., and Westfield, Conn	6.0
Middletown, Conn., and Cromwell, Conn	2.1
Burnside, Conn., and Vernon, Conn	8.0
Taft's, Conn., and Central Village, Conn	16.7
Total	169.7

The most important electric zone is that which includes the four-track main line between Cedar Hill (New Haven), Conn., and Woodlawn Junction, N. Y., together with its branches, consisting of a six-track line between New Rochelle, N. Y., and the Harlem River Terminal in New York City; a double-track line between Stamford, Conn., and New Canaan, Conn.; and a double-track line between South Norwalk, Conn., and Wilson's Point, Conn. In this zone there are in all about 85 miles of road operated from overhead catenary, 11,000-volt, single-phase system. Over the lines included in the electric zone the carrier operates electric freight and passenger locomotives and multiple-unit passenger-car trains. A large number of the passenger locomotives and multiple-unit cars are equipped to

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operate on direct as well as alternating current to permit the continuation of the passenger service into the Grand Central Terminal at New York. Electric power for the operation of the lines embraced in the zone is generated by steam plants, of which the most important is located at Cos Cob, Conn. The remaining mileage, equipped for electrical operation, embraces several short and less important sections of the road, all operated from overhead trolley wire using direct current, 650-volt system.

Terminals.

The principal freight and passenger terminals used by the carrier are shown in the following tabulation:

Location.	Basis of use.		Remarks[1].
	Freight terminal.	Passenger terminal.	
Boston, Mass.	Ownership and lease.	Rental	Passenger terminal owned by the Boston Terminal Company. Part of freight facilities owned by Old Colony Railroad.
Hartford, Conn.	Ownership	Ownership	
Lowell, Mass.	Lease	Rental	Freight terminal owned by Old Colony Railroad. Passenger terminal owned by the Boston and Lowell Railroad Corporation, lessor to the Boston and Maine Railroad.
New Bedford, Mass.	do	Lease	Owned by Old Colony Railroad.
New Haven, Conn.	Ownership	Ownership	
New London, Conn.	do	Joint ownership.	Passenger terminal ownership, carrier two-thirds, Central Vermont Railway Company one-third.
Newport, R. I.	Lease	Lease	Owned by Old Colony Railroad.
New York, N. Y.	do	Rental	Freight terminals owned by The Harlem River and Port Chester. Passenger terminal owned by New York and Harlem Railroad Company, lessor to The New York Central Railroad Company.
Pittsfield, Mass.	Ownership	do	Passenger terminal owned by Boston and Albany Railroad Company, lessor to The New York Central Railroad Company.
Providence, R. I.	do	Ownership	The Boston and Providence, the Providence and Worcester, and the carrier, all have ownerships in both the freight and passenger terminals.

Location.	Basis of use. Freight terminal.	Passenger terminal.	Remarks.[1]
Springfield, Mass.	do	Rental	Passenger terminal owned by Boston and Albany Railroad Company.
Worcester, Mass.	Lease	do	Freight terminal owned by the Providence and Worcester. Passenger terminal owned by Boston and Albany *Roadway* Company.
Harlem River, N. Y.	do	Lease	Owned by The Harlem River and Port Chester Railroad Company.

[1] The terms under which the properties not owned are used are shown in Appendix 2, under leased railway property.

Traffic Connections.

The railroad operated by the carrier connects with the tracks of other carriers at the following points:

120 Carrier.	Connecting points.
Boston and Maine Railroad	Clinton, Concord, Easthampton, Fitchburg, Holyoke, Lowell, Northampton, Shelburne Falls, Springfield, South Sudbury, Sterling Junction, Terner's Falls, and Worcester, Mass.
Boston and Albany Railroad Company	Ashland, Boston, Newton, Milford, Pittsfield, South Framingham, Springfield, State Line, Webster, Westfield, and Worcester, Mass.
Central Vermont Railway Company	New London, Norwich, and Willimantic, Conn.
Central New England Railway Company	Canaan, Danbury, Hartford, Pine Meadows, Simsbury, and Winsted, Conn.
The Boston Terminal Company	Boston, Mass.
Union Freight Railroad (Boston, Mass.)	Boston, Mass.
The Narragansett Pier Railroad Company	Kingston, R. I.
Wood River Branch Railroad Company	Wood River Junction, R. I.
The New York Central Railroad Company	Woodlawn Junction, N. Y.
New York, Westchester and Boston Railroad Company	New York, N. Y. (One hundred and seventy-fourth Street).
South Manchester Railroad Company	Manchester, Conn.
Moshassuck Valley Railroad Company	Woodlawn, R. I.
Grafton & Upton Railroad	Milford, Mass.

In addition, the carrier has connection with boat lines at Boston, Mass.; Bridgeport, Conn.; Fall River, Mass.; Hartford, Conn.; New Bedford, Mass.; New Haven, Conn.; New London, Conn.; Newport, R. I.; New York, N. Y.; Providence, R. I.

Physical Conditions Affecting Construction.

Topography.—The terrain of the region traversed by the carrier's lines varies from undulating to semimountainous. Along the coast are tidal marsh lands. Some of the carrier's tracks reach an altitude of about 1,000 feet above sea level.

Geology.—The subsoil generally is glacial drift, consisting of sand, gravel, boulders, and clay, the mixture of sand and gravel predominating. The rocks are largely crystalline and consist principally of granite, a strong massive gneiss resembling granite, limestone, sandstone, and trap rock. Fresh and salt water marshes, consisting of decomposed vegetable matter of varying degree of thickness and often requiring some artificial means of support for the railroad embankments, are of frequent occurrence on many of the lines.

Climate.—The climate is variable and rugged, with considerable snow in winter.

Economic Conditions Relating to Traffic.

The carrier's lines cover a region not primarily agricultural, the soil being rather sterile, except in the river valleys and lowlands. The principal farm products are hay, potatoes, vegetables, cereals, fruits, poultry, and tobacco. The region served is highly industrial. The principal industries are the manufacture of boots and shoes, cotton, woolen and silk goods, clothing, brass, bronze and copper products, paper and pulp wood, jewelry, firearms and ammunition, confectionery, cutlery and edge tools, plated ware, dyeing and finishing textiles, printing and publishing, and marble and stone work.

121 Physical Characteristics of Road.

Grades.—The maximum grade on main lines approximates 0.75 per cent, and on branch lines seldom goes above 1.25 per cent. West on the Buzzards Bay to Princetown section southbound maximum grade is 1.52 per cent, and northbound 1.33 per cent; Fitchburg to Framingham northbound, 1.67 per cent; Danbury to Pittsfield northbound, 1.51 per cent; Simsbury to Northampton northbound 1.34 per cent. The ruling grade is seldom in excess of 1 per cent.

Curvature.—The ordinary curvature on main lines is about 2.5° and the maximum about 7°. Boston, Mass., to

Danbury, Conn., and Providence, R. I., to Worcester, Mass., has a 3° average. The section New York, N. Y., to Pittsfield, Mass., has a 3.25° average and 12° maximum.

Grading.—The volume of grading on all lines of the carrier's system averages about 60,000 cubic yards per mile, about 8 per cent of the road mileage falling under 20,000 cubic yards per mile, about 79 per cent between 20,000 and 100,000 cubic yards per mile, and about 13 per cent over 100,000 cubic yards per mile. Upon the railroad as a whole the grading consists of materials classified as common excavation, 90 per cent; loose rock excavation, 1 per cent; solid rock excavation, 9 per cent. The rock comprises a comparatively small volume of the total grading, but it occurs, however, in saddles and pinnacles, sharp in profile and widely distributed, and the overlaying earth is of a depth varying sharply within a few hundred feet. The pockets formed by the rock saddles are frequently wet. Across the salt-marsh lands, inland swamps, and "muskegs" where the subsidence of embankments constitutes a considerable factor in the determination of grading quantities, the amount has been determined by field tests. Along the coast lines large quantities of riprap have been used for the protection of embankments subject to the action of the water.

Tunnels and subways.—There are three tunnels of importance on the road, with an aggregate length of about 9,860 feet. Of the remaining tunnels, which are few in number, none exceeds a maximum length of 350 feet. The principal of the three mentioned is a double-track, single-bore tunnel at Providence, R. I., with a length of 5,080 feet, which was built in connection with extensive terminal improvements at that place, and is electrically operated. Passing diagonally under the streets of an important residential section of the city, a part of this tunnel at each end was built by the cut-and-cover method, but for the most part it was driven through a very treacherous and unreliable rock that involved considerable difficulty in its construction.

Equipment.

The carrier's equipment is shown in the following table, classified as owned and used, with the exception of one wrecking crane (electric), which is jointly owned:

Steam locomotives	1,165
Electric locomotives	104
Freight-train cars	34,668

Passenger-train cars (158 have motor equipment)	2,442
Units of motor equipment	161
Floating equipment	74
Work equipment	1,488
Miscellaneous equipment	11

In addition, the carrier owns and uses jointly 1 electric wrecking crane.

122 Engineering and General Expenditures.

Engineering has been estimated on the road accounts 3 to 47, inclusive, at the percentages given in the following table:

The carrier:	Per cent.
Acorn Street, Providence, R. I., to Quinnipiac River, New Haven, Conn.	4.25
Quinnipiac River, New Haven, Conn., to Woodlawn, N. Y.	4.00
All other sections	4.50
Boston and Providence (Mass.)	4.25
Boston and Providence (R. I.)	4.25
Chatham Railroad	4.50
Harlem River and Port Chester	4.00
Holyoke and Westfield	4.50
Norwich and Worcester	4.50
Old Colony Railroad	4.50
Providence, Warren and Bristol	4.25
Providence and Worcester	4.25
Ireland Real Estate Company	4.00

General expenditures, exclusive of interest, have been estimated at 1.5 per cent upon the road accounts 1 to 47, inclusive, except account 2. Interest during construction has been estimated for one-half the construction periods indicated below, plus 3 months, at the rate of 6 per cent per annum on all road and general-expenditures accounts, excepting accounts 2 and 76, and for 3 months upon the equipment accounts 51 to 58, inclusive. Construction periods have been placed as follows:

	Months.
The carrier	6 to 42
Boston and Providence (Mass.)	36
Boston and Providence (R. I.)	30
Chatham Railroad	6
Harlem River and Port Chester	36
Holyoke and Westfield	12
Norwich and Worcester	24
Old Colony Railroad	6 to 32
Providence, Warren and Bristol	18
Providence and Worcester	30
Ireland Real Estate Company	6

Summaries.

The carrier's or lessors' portions of jointly owned minor facilities are included in the reproduction costs shown for property wholly owned or used.

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The Carrier.

All Sections, Wholly Owned and Used.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$5,895,637	$5,895,637
3	Grading	36,179,425	35,058,836
5	Tunnels and subways	2,266,553	2,161,001
6	Bridges, trestles, and culverts	23,028,306	18,119,931
8	Ties	5,906,363	3,217,552
9	Rails	9,421,931	8,450,679
10	Other track material	3,005,229	2,098,234
11	Ballast	4,271,840	3,163,607
12	Tracklaying and surfacing	5,345,816	3,983,913
13	Right-of-way fences	1,202,167	674,505
14	Snow and sand fences and snowsheds	19,248	6,515
15	Crossings and signs	8,412,982	6,589,697
16	Station and office buildings	15,425,341	11,662,434
17	Roadway buildings	697,768	454,205
18	Water stations	680,109	501,531
19	Fuel stations	580,480	436,726
20	Shops and engine houses	3,851,802	2,864,282
23	Wharves and docks	1,797,274	1,029,894
24	Coal and ore wharves	429,957	210,313
25	Gas-producing plants	71,606	32,974
26	Telegraph and telephone lines	222,397	198,555
27	Signals and interlockers	3,075,937	2,500,874
28	Power dams, canals, and pipe lines	85,931	77,792
29	Power-plant buildings	1,129,220	1,065,123
30	Power-substation buildings	13,729	12,428
31	Power-transmission systems	48,226	41,820
32	Power-distribution systems	2,439,521	2,233,656
33	Power-line poles and fixtures	2,074,001	1,911,918
34	Underground conduits	2,915	2,422
35	Miscellaneous structures	9,180	8,873
36	Paving	33,394	17,923
37	Roadway machines	108,626	62,190
38	Roadway small tools	181,102	90,551
44	Shop machinery	2,088,927	1,260,658
45	Power-plant machinery	2,458,900	2,013,511
46	Power-substation apparatus	103,225	84,495
	Total, 1, and 3 to 47, inclusive	142,565,065	118,195,555
	II. Equipment.		
51	Steam locomotives	15,744,183	7,734,569
52	Other locomotives	4,221,410	3,449,801
53	Freight-train cars	35,660,323	24,276,860
54	Passenger-train cars	19,373,239	12,112,569
55	Motor equipment of cars	719,753	586,708
56	Floating equipment	3,079,935	1,882,244
57	Work equipment	1,438,855	956,420
58	Miscellaneous equipment	11,620	9,010
	Total, 51 to 58, inclusive	80,249,318	51,008,181

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	2,138,476	1,772,492
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	16,712,861	13,639,484
	Total, 71 to 77, inclusive	18,851,337	15,411,976
	Grand total, 1, and 3 to 77, inclusive	241,665,720	184,615,712
124	*In Connecticut, Wholly Owned and Used.*		
	I. Road.		
1	Engineering	$3,987,058	$3,987,058
3	Grading	25,581,621	24,878,820
5	Tunnels and subways	1,141,679	1,068,205
6	Bridges, trestles, and culverts	16,987,734	13,366,922
8	Ties	4,136,467	2,291,071
9	Rails	6,483,351	5,885,150
10	Other track material	2,083,773	1,483,524
11	Ballast	2,805,346	2,072,782
12	Tracklaying and surfacing	3,589,749	2,701,919
13	Right-of-way fences	802,544	453,462
14	Snow and sand fences and snowsheds	623	312
15	Crossings and signs	4,937,960	3,908,536
16	Station and office buildings	9,279,861	7,183,007
17	Roadway buildings	484,318	307,011
18	Water stations	494,167	367,198
19	Fuel stations	338,148	246,331
20	Shops and engine houses	2,419,662	1,763,723
23	Wharves and docks	1,006,221	549,815
24	Coal and ore wharves	259,519	135,834
25	Gas-producing plants	71,322	32,761
26	Telegraph and telephone lines	169,623	150,738
27	Signals and interlockers	2,223,682	1,880,956
28	Power dams, canals, and pipe lines	85,931	77,792
29	Power-plant buildings	1,126,617	1,063,171
30	Power-substation buildings	13,729	12,428
31	Power-transmission systems	28,736	24,417
32	Power-distribution systems	1,812,256	1,701,439
33	Power-line poles and fixtures	1,601,015	1,513,506
34	Underground conduits	718	617
35	Miscellaneous structures	8,485	8,233
36	Paving	3,865	1,933
37	Roadway machines	46,167	26,432
38	Roadway small tools	77,554	38,777
44	Shop machinery	804,498	454,871
45	Power-plant machinery	1,998,048	1,720,098
46	Power-substation apparatus	99,817	81,416
	Total, 1, and 3 to 47, inclusive	96,991,864	81,440,265

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	1,454,878	1,222,098
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	10,749,532	9,029,607
	Total, 71 to 77, inclusive	12,204,410	10,251,705
	Grand total, 1, and 3 to 77, inclusive	109,196,274	91,691,970
125	*In Massachusetts, Wholly Owned and Used.*		
	I. Road.		
1	Engineering	$1,076,195	$1,076,195
3	Grading	6,084,896	5,905,485
5	Tunnels and subways	16,978	12,249
6	Bridges, trestles, and culverts	2,895,460	2,196,111
8	Ties	990,946	495,477
9	Rails	1,611,916	1,391,426
10	Other track material	507,529	327,961
11	Ballast	536,892	394,189
12	Tracklaying and surfacing	982,509	703,656
13	Right-of-way fences	206,455	114,918
14	Snow and sand fences and snowsheds	18,291	6,036
15	Crossings and signs	2,075,931	1,654,194
16	Station and office buildings	3,276,972	2,255,177
17	Roadway buildings	123,448	82,676
18	Water stations	110,335	78,395
19	Fuel stations	241,939	190,112
20	Shops and engine houses	1,325,072	1,026,104
23	Wharves and docks	722,378	453,066
24	Coal and ore wharves	887	242
26	Telegraph and telephone lines	20,766	18,378
27	Signals and interlockers	277,631	201,306
29	Power-plant buildings	1,157	868
31	Power-transmission systems	18,490	16,588
32	Power-distribution systems	71,512	54,754
33	Power-line poles and fixtures	23,713	11,178
34	Underground conduits	2,140	1,755
36	Paving	9,430	5,941
37	Roadway machines	45,260	25,912
38	Roadway small tools	68,096	34,048
44	Shop machinery	1,233,114	778,505
45	Power-plant machinery	411,862	267,559
46	Power-substation apparatus	3,408	3,079
	Total, 1, and 3 to 47, inclusive	24,991,608	19,783,540

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	374,874	296,150
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	2,407,704	1,902,086
	Total, 71 to 77, inclusive	2,782,578	2,198,236
	Grand total, 1, and 3 to 77, inclusive	27,774,186	21,981,776
	In New York, wholly Owned and Used.		
	I. Road.		
1	Engineering	$280,830	$280,830
3	Grading	1,904,021	1,736,017
6	Bridges, trestles, and culverts	705,642	557,673
8	Ties	252,582	166,866
9	Rails	334,486	314,084
10	Other track material	136,229	104,551
11	Ballast	330,922	247,707
12	Tracklaying and surfacing	177,000	139,830
13	Right-of-way fences	22,839	13,238
15	Crossings and signs	754,686	570,829
16	Station and office buildings	1,071,666	831,468
17	Roadway buildings	15,395	11,600
18	Water stations	9,272	6,650
19	Fuel stations	393	283
20	Shops and engine houses	45,884	33,009
23	Wharves and docks	1,722	1,238
26	Telegraph and telephone lines	11,769	10,245
27	Signals and interlockers	201,708	146,507
29	Power-plant buildings	235	176
126			
32	Power-distribution systems	540,907	465,125
33	Power-line poles and fixtures	434,982	375,515
34	Underground conduits	57	50
35	Miscellaneous structures	695	640
37	Roadway machines	5,792	3,316
38	Roadway small tools	9,784	4,892
44	Shop machinery	3,121	2,016
45	Power-plant machinery	21,218	11,592
	Total, 1, and 3 to 47, inclusive	7,273,837	6,035,947
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	109,108	90,56
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	885,953	735,341
	Total, 71 to 77, inclusive	995,061	825,901
	Grand total, 1, and 3 to 77, inclusive	8,268,898	6,861,848

In Rhode Island, Wholly Owned and Used.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$551,502	$551,502
3	Grading	2,608,887	2,538,514
5	Tunnels and subways	1,107,896	1,080,547
6	Bridges, trestles, and culverts	2,439,470	1,999,225
8	Ties	526,368	264,138
9	Rails	992,178	860,019
10	Other track material	277,698	182,198
11	Ballast	598,680	448,929
12	Tracklaying and surfacing	596,558	438,508
13	Right-of-way fences	170,329	92,887
14	Snow and sand fences and snowsheds	334	167
15	Crossings and signs	644,405	456,138
16	Station and office buildings	1,795,691	1,391,919
17	Roadway buildings	74,607	52,918
18	Water stations	66,335	49,288
20	Shops and engine houses	61,184	41,446
23	Wharves and docks	66,953	25,775
24	Coal and ore wharves	169,551	74,537
25	Gas-producing plants	284	213
26	Telegraph and telephone lines	20,239	19,194
27	Signals and interlockers	372,916	272,105
29	Power-plant buildings	1,211	908
31	Power-transmission systems	1,000	815
32	Power-distribution systems	14,846	12,338
33	Power-line poles and fixtures	14,291	11,719
36	Paving	20,099	10,049
37	Roadway machines	11,407	6,530
38	Roadway small tools	25,668	12,834
44	Shop machinery	48,194	25,266
45	Power-plant machinery	27,772	14,262
	Total, 1, and 3 to 47, inclusive	13,306,553	10,934,888
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	199,598	163,670
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	1,465,804	1,201,959
	Total, 71 to 77, inclusive	1,665,402	1,365,629
	Grand total, 1, and 3 to 77, inclusive	14,971,955	12,300,517

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Not Allocated to States, Wholly Owned and Used.

	I. Road.		
1	Engineering	$52	$52
16	Station and office buildings	1,151	863
	Total, 1, and 3 to 47, inclusive	1,203	915

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	II. Equipment.		
51	Steam locomotives	15,744,183	7,734,569
52	Other locomotives	4,221,410	3,449,801
53	Freight-train cars	35,660,323	24,276,860
54	Passenger-train cars	19,373,239	12,112,569
55	Motor equipment of cars	719,753	586,708
56	Floating equipment	3,079,935	1,882,244
57	Work equipment	1,438,855	956,420
58	Miscellaneous equipment	11,620	9,010
	Total, 51 to 58, inclusive	80,249,318	51,008,181
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	18	14
74	Stationery and printing		
77	Other expenditures, general		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	1,203,868	770,491
	Total, 71 to 77, inclusive	1,203,886	770,505
	Grand total, 1, and 3 to 77, inclusive.	81,454,407	51,779,601

All Sections, Owned but not Used, Leased to the Central New England Railway Company.

	I. Road.		
1	Engineering	$134,074	$134,074
3	Grading	1,266,173	1,262,954
6	Bridges, trestles, and culverts	504,059	418,117
8	Ties	182,386	91,193
9	Rails	322,934	294,948
10	Other track material	92,905	65,575
11	Ballast	86,418	64,133
12	Tracklaying and surfacing	173,567	130,175
13	Right-of-way fences	27,110	15,379
15	Crossings and signs	85,939	68,835
16	Station and office buildings	104,291	63,903
17	Roadway buildings	10,701	7,059
18	Water stations	34,110	21,578
19	Fuel stations	6,114	1,846
20	Shops and engine houses	26,564	16,295
23	Wharves and docks	47,724	18,054
26	Telegraph and telephone lines	179	154
27	Signals and interlockers	2,481	2,122
37	Roadway machines	1,925	1,102
38	Roadway small tools	1,929	965
44	Shop machinery	1,900	988
	Total, 1, and 3 to 47, inclusive	3,113,483	2,679,449

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	46,703	40,213
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	237,014	204,078
	Total, 71 to 77, inclusive	283,717	244,291
	Grand total, 1, and 3 to 77, inclusive	3,397,200	2,923,740

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In Connecticut, Owned but not Used, Leased to the Central New England Railway Company.

	I. Road.		
1	Engineering	$13,894	$13,894
3	Grading	107,971	107,850
6	Bridges, trestles, and culverts	55,649	48,880
8	Ties	24,877	12,439
9	Rails	41,421	37,880
10	Other track material	12,912	9,494
11	Ballast	13,314	9,985
12	Tracklaying and surfacing	23,875	17,906
13	Right-of-way fences	3,756	1,890
15	Crossings and signs	18,876	15,909
16	Station and office buildings	5,215	3,422
17	Roadway buildings	454	251
27	Signals and interlockers	252	228
38	Roadway small tools	175	88
	Total, 1, and 3 to 47, inclusive	322,641	280,116
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	4,840	4,211
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	24,561	21,368
	Total, 71 to 77, inclusive	29,401	25,579
	Grand total, 1, and 3 to 77, inclusive	352,042	305,695

In New York, Owned but not Used, Leased to the Central New England Railway Company.

	I. Road.		
1	Engineering	$120,180	$120,180
3	Grading	1,158,202	1,155,104
6	Bridges, trestles, and culverts	448,410	369,237
8	Ties	157,509	78,754
9	Rails	281,513	257,068
10	Other track material	79,993	56,081
11	Ballast	73,104	54,148
12	Tracklaying and surfacing	149,692	112,269
13	Right-of-way fences	23,354	13,489
15	Crossings and signs	67,063	52,926

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
16	Station and office buildings	99,076	60,481
17	Roadway buildings	10,247	6,808
18	Water stations	34,110	21,578
19	Fuel stations	6,114	1,846
20	Shops and engine houses	26,564	16,295
23	Wharves and docks	47,724	18,054
26	Telegraph and telephone lines	179	154
27	Signals and interlockers	2,229	1,894
37	Roadway machines	1,925	1,102
38	Roadway small tools	1,754	877
44	Shop machinery	1,900	988
	Total, 1, and 3 to 47, inclusive	2,790,842	2,399,333
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	41,863	36,002
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	212,453	182,710
	Total, 71 to 77, inclusive	254,316	218,712
	Grand total, 1, and 3 to 77, inclusive	3,045,158	2,618,045

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In Massachusetts, Owned but not Used, Leased to the Boston and Maine Railroad.

	I. Road.		
1	Engineering	$93	$93
8	Ties	381	336
9	Rails	584	376
10	Other track material	248	163
11	Ballast	260	208
12	Tracklaying and surfacing	597	442
	Total, 1, and 3 to 47, inclusive	2,163	1,618
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	32	24
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	165	124
	Total, 71 to 77, inclusive	197	148
	Grand total, 1, and 3 to 77, inclusive	2,360	1,766

In New York, jointly owned but not used; owned by the carrier, 49.83 per cent, by The New York Central Railroad Company, 50.17 per cent; jointly leased to and used by the New York Central, 71.05 per cent; Adams Express Company, 28.95 per cent; carrier's owned portion shown in following summary.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$12,481	$12,481
16	Station and office buildings	277,355	269,034
	Total, 1, and 3 to 47, inclusive	289,836	281,515
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	4,348	4,218
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	35,302	34,243
	Total, 71 to 77, inclusive	39,650	38,461
	Grand total, 1, and 3 to 77, inclusive	329,486	319,976

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In New York, Used but not Owned, Leased from Ireland Real Estate Company.

	I. Road.		
1	Engineering	$4,703	$4,703
16	Station and office buildings	46,713	40,729
23	Wharves and docks	70,855	64,644
	Total, 1, and 3 to 47, inclusive	122,271	110,076
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	1,834	1,651
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	3,723	3,351
	Total, 71 to 77, inclusive	5,557	5,002
	Grand total, 1, and 3 to 77, inclusive	127,828	115,078

In Connecticut, Owned but not Used, Leased to the Hartford & New York Transportation Company.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	II. Terminal Property.		
WP 4	Wharves, docks, and terminals	$7,602	$4,089
	III. General Expenditures.		
WP 11	Miscellaneous	664	506
	Total, WP 1 to WP 11, inclusive, except WP 6 and WP 7	8,266	4,595

In Connecticut, Used but not Owned, Leased from the Connecticut Company.

	I. Road.		
1	Engineering	$402	$402
45	Power-plant machinery	9,467	3,777
	Total, 1, and 3 to 47, inclusive	9,869	4,179
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	148	62
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	250	105
	Total, 1 to 77, inclusive	398	167
	Grand total, 1, and 3 to 77, inclusive	10,267	4,346

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All Sections, Owned but not Used, Leased to the Carrier.

	I. Road.		
1	Engineering	$1,685,504	$1,685,504
3	Grading	8,900,767	8,560,274
6	Bridges, trestles, and culverts	4,789,919	3,708,875
8	Ties	2,166,131	1,083,092
9	Rails	3,454,084	3,037,538
10	Other track material	1,006,932	664,637
11	Ballast	1,119,243	834,727
12	Tracklaying and surfacing	2,161,279	1,574,378
13	Right-of-way fences	607,311	329,040
15	Crossings and signs	3,776,715	2,980,240
16	Station and office buildings	5,601,292	4,362,471
17	Roadway buildings	235,057	150,191
18	Water stations	237,609	168,262
19	Fuel stations	152,256	110,776
20	Shops and engine houses	1,581,274	1,215,821
23	Wharves and docks	516,401	273,750
25	Gas-producing plants	15,804	10,746
26	Telegraph and telephone lines	17,804	16,055
27	Signals and interlockers	919,274	685,297
29	Power-plant buildings	91,023	77,749

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
30	Power-substation buildings	413	378
31	Power-transmission systems	4,900	4,382
32	Power-distribution systems	76,192	59,447
33	Power-line poles and fixtures	22,313	9,982
35	Miscellaneous structures	125	100
36	Paving	1,528	1,289
	Total, 1, and 3 to 47, inclusive	39,141,150	31,605,001
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	587,117	474,379
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	3,559,824	2,877,249
	Total, 71 to 77, inclusive	4,146,941	3,351,628
	Grand total, 1, and 3 to 77, inclusive	43,288,091	34,956,629
	In Massachusetts, Owned but not Used, Leased to the Carrier.		
	I. Road.		
1	Engineering	$1,617,391	$1,617,391
3	Grading	8,559,809	8,229,937
6	Bridges, trestles, and culverts	4,502,280	3,482,947
8	Ties	2,101,006	1,050,506
9	Rails	3,353,678	2,950,856
10	Other track material	971,274	641,979
11	Ballast	1,080,427	805,866
12	Tracklaying and surfacing	2,090,265	1,523,647
13	Right-of-way fences	568,940	304,795
15	Crossings and signs	3,720,052	2,939,501
16	Station and office buildings	5,390,692	4,233,846
17	Roadway buildings	227,166	146,084
18	Water stations	229,445	163,742
19	Fuel stations	152,256	110,776
20	Shops and engine houses	1,454,897	1,135,525
23	Wharves and docks	438,537	237,345
26	Telegraph and telephone lines	15,104	13,577
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27	Signals and interlockers	$914,429	$681,937
29	Power-plant buildings	91,023	77,749
30	Power-substation buildings	413	378
31	Power-transmission systems	3,810	3,355
32	Power-distribution systems	59,431	45,311
33	Power-line poles and fixtures	16,143	7,205
35	Miscellaneous structures	125	100
36	Paving	805	805
	Total, 1, and 3 to 47, inclusive	37,559,398	30,405,160

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	563,391	456,347
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	3,435,652	2,782,878
	Total, 71 to 77, inclusive	3,999,043	3,239,225
	Grand total, 1, and 3 to 77, inclusive	41,558,441	33,644,385
	In Rhode Island, Owned but not Used, Leased to the Carrier.		
	I. Road.		
1	Engineering	$68,113	$68,113
3	Grading	340,958	330,337
6	Bridges, trestles, and culverts	287,639	225,928
8	Ties	65,125	32,586
9	Rails	100,406	86,682
10	Other track material	35,658	22,658
11	Ballast	38,816	28,861
12	Tracklaying and surfacing	71,014	50,731
13	Right-of-way fences	38,371	24,245
15	Crossings and signs	56,663	40,739
16	Station and office buildings	210,600	128,625
17	Roadway buildings	7,891	4,107
18	Water stations	8,164	4,520
20	Shops and engine houses	126,377	80,296
23	Wharves and docks	77,864	36,405
25	Gas producing plants	15,804	10,746
26	Telegraph and telephone lines	2,700	2,478
27	Signals and interlockers	4,845	3,360
31	Power-transmission systems	1,090	1,027
32	Power-distribution systems	16,761	14,136
33	Power-line poles and fixtures	6,170	2,777
36	Paving	723	484
	Total, 1, and 3 to 47, inclusive	1,581,752	1,199,841
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	23,726	18,032
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	124,172	94,371
	Total, 71 to 77, inclusive	147,898	112,403
	Grand total, 1, and 3 to 77, inclusive	1,729,650	1,312,244

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In Massachusetts, Owned but not Used, Leased to the New England Steamship Company.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	II. Terminal Property.		
WP 4	Wharves, docks, and terminals	$720,693	$141,585
	III. General Expenditures.		
WP 11	Miscellaneous	97,128	71,857
	Total, WP 1 to WP 11, inclusive, except WP 6 and WP 7	817,821	513,442

In Rhode Island, Owned but not Used, Leased to the New England Steamship Company.

	II. Terminal Property.		
WP 4	Wharves, docks, and terminals	$334,097	$200,556
WP 10	Shops, power plants, and miscellaneous structures	155,207	108,299
	Total, WP 4 to WP 10, inclusive	489,304	308,855
	III. General Expenditures.		
WP 11	Miscellaneous	50,448	39,641
	Grand total, WP 1 to WP 11, inclusive, except WP 6 and WP 7	539,752	348,496

In Massachusetts, Owned but not Used, Leased to the New Bedford, Martha's Vineyard and Nantucket Steamboat Company.

	II. Terminal Property.		
WP 4	Wharves, docks, and terminals	$35,370	$14,325
	III. General Expenditures.		
WP 11	Miscellaneous	3,087	2,134
	Total, WP 1 to WP 11, inclusive, except WP 6 and WP 7	38,457	16,459

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In Massachusetts, Owned but not Used, Leased to the Boston and Maine Railroad.

	I. Road.		
1	Engineering	$2,599	$2,599
3	Grading	8,033	8,033
6	Bridges, trestles, and culverts	15,260	10,692
8	Ties	8,340	4,171
9	Rails	10,003	8,532
10	Other track material	3,944	2,802
11	Ballast	3,552	2,664
12	Tracklaying and surfacing	7,370	5,159
15	Crossings and signs	1,259	725
	Total, 1, and 3 to 47, inclusive	60,360	45,377

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	905	679
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	2,757	2,068
	Total, 71 to 77, inclusive	3,662	2,747
	Grand total, 1, and 3 to 77, inclusive	64,022	48,124
	Boston and Providence (Mass.)		
	All Sections, Owned but not Used, Leased to the Carrier.		
	I. Road.		
1	Engineering	$502,899	$502,899
3	Grading	3,025,672	2,799,372
5	Tunnels and subways	37,701	30,971
6	Bridges, trestles, and culverts	1,398,231	1,085,140
8	Ties	371,829	188,802
9	Rails	777,690	653,349
10	Other track material	222,678	140,164
11	Ballast	287,787	215,621
12	Tracklaying and surfacing	423,916	306,348
13	Right-of-way fences	115,150	61,643
15	Crossings and signs	1,284,900	995,658
16	Station and office buildings	2,299,517	1,857,341
17	Roadway buildings	54,696	31,308
18	Water stations	56,164	37,939
19	Fuel stations	26,800	15,733
20	Shops and engine houses	830,762	657,076
26	Telegraph and telephone lines	27,802	22,288
27	Signals and interlockers	420,141	281,762
30	Power-substation buildings	12,095	10,518
31	Power-transmission systems	190	190
32	Power-distribution systems	6,653	5,164
33	Power-line poles and fixtures	2,220	961
44	Shop machinery	127,018	50,492
45	Power-plant machinery	23,301	12,987
	Total, 1, and 3 to 47, inclusive	12,335,812	9,963,726
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	185,037	150,026
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	1,314,689	1,065,936
	Total, 71 to 77, inclusive	1,499,726	1,215,962
	Grand total, 1, and 3 to 77, inclusive	13,835,538	11,179,688

135 *In Massachusetts, Owned but not Used, Leased to the Carrier.*

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$483,046	$483,046
3	Grading	2,880,332	2,662,776
5	Tunnels and subways	37,701	30,971
6	Bridges, trestles, and culverts	1,319,036	1,016,728
8	Ties	355,921	179,240
9	Rails	748,483	626,227
10	Other track material	211,732	132,677
11	Ballast	278,795	208,876
12	Tracklaying and surfacing	405,103	291,674
13	Right-of-way fences	111,227	59,903
15	Crossings and signs	1,210,908	931,705
16	Station and office buildings	2,292,562	1,853,472
17	Roadway buildings	53,452	30,726
18	Water stations	41,242	30,218
19	Fuel stations	12,184	9,172
20	Shops and engine houses	807,289	641,528
26	Telegraph and telephone lines	27,589	22,086
27	Signals and interlockers	419,874	281,518
31	Power-transmission systems	190	190
32	Power-distribution systems	1,523	1,166
33	Power-line poles and fixtures	320	320
44	Shop machinery	127,018	50,492
45	Power-plant machinery	23,301	12,987
	Total, 1, and 3 to 47, inclusive	11,848,828	9,557,698
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	177,732	143,963
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	1,262,789	1,022,859
	Total, 71 to 77, inclusive	1,440,521	1,166,822
	Grand total, 1, and 3 to 77, inclusive	13,289,349	10,724,520

In Rhode Island, Owned but not Used, Leased to the Carrier.

	I. Road.		
1	Engineering	$19,853	$19,853
3	Grading	145,340	136,596
6	Bridges, trestles, and culverts	79,195	68,412
8	Ties	15,908	9,562
9	Rails	29,207	27,122
10	Other track material	10,946	7,487
11	Ballast	8,992	6,745
12	Tracklaying and surfacing	18,813	14,674
13	Right-of-way fences	3,923	1,740
15	Crossings and signs	73,992	63,953
16	Station and office buildings	6,955	3,869
17	Roadway buildings	1,244	582
18	Water stations	14,922	7,721
19	Fuel stations	14,616	6,561
20	Shops and engine houses	23,473	15,548
26	Telegraph and telephone lines	213	202

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
27	Signals and interlockers	267	244
30	Power-substation buildings	12,095	10,518
32	Power-distribution systems	5,130	3,998
33	Power-line poles and fixtures	1,900	641
	Total, 1, and 3 to 47, inclusive	486,984	406,028

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III. General Expenditures.

71	Organization expenses		
72	General officers and clerks		
73	Law	$7,305	$6,063
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	51,900	43,077
	Total, 71 to 77, inclusive	59,205	49,140
	Grand total, 1, and 3 to 77, inclusive	546,189	455,168

Boston and Providence (R. I.)

Owned, but not Used, Leased to the Carrier.

I. Road.

1	Engineering	$48,210	$48,210
3	Grading	23,213	22,726
6	Bridges, trestles, and culverts	307,054	231,844
8	Ties	17,617	8,809
9	Rails	21,390	18,249
10	Other track material	15,672	9,597
11	Ballast	7,148	5,361
12	Tracklaying and surfacing	15,887	10,803
13	Right-of-way fences	2,621	1,891
15	Crossings and signs	7,158	4,466
16	Station and office buildings	607,979	493,851
17	Roadway buildings	19,269	11,922
18	Water stations	570	570
19	Fuel stations	3,939	1,849
20	Shops and engine houses	3,565	1,405
23	Wharves and docks	70,170	29,478
32	Power-distribution systems	474	390
33	Power-line poles and fixtures	60	20
36	Paving	10,568	5,284
	Total, 1, and 3 to 47, inclusive	1,182,564	906,725

III. General Expenditures.

71	Organization expenses		
72	General officers and clerks		
73	Law	17,738	13,658
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	108,027	83,181
	Total, 71 to 77, inclusive	125,765	96,839
	Grand total, 1, and 3 to 77, inclusive	1,308,239	1,003,564

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In Rhode Island, jointly owned but not used, owned, one-half each, by the Boston and Providence (R. I.) and the Providence and Worcester; owned portion of the Boston and Providence (R. I.), leased to the carrier, shown below.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$67,692	$67,692
3	Grading	438,719	412,295
6	Bridges, trestles, and culverts	227,190	169,568
8	Ties	49,036	25,506
9	Rails	94,067	80,564
10	Other track material	41,386	26,439
11	Ballast	39,774	29,511
12	Tracklaying and surfacing	56,688	40,815
13	Right-of-way fences	11,701	8,954
15	Crossings and signs	324,671	267,597
16	Station and office buildings	207,086	177,922
17	Roadway buildings	2,458	1,043
18	Water stations	1,704	1,567
20	Shops and engine houses	33	13
26	Telegraph and telephone lines	5,491	5,069
27	Signals and interlockers	92,745	78,310
	Total, 1, and 3 to 47, inclusive	1,660,441	1,392,865
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	24,906	20,921
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	151,682	127,413
	Total, 71 to 77, inclusive	176,588	148,334
	Grand total, 1, and 3 to 77, inclusive	1,837,029	1,541,199

Providence, Warren and Bristol.

All Sections, Owned but not Used, Leased to the Carrier.

	I. Road.		
1	Engineering	$75,670	$75,670
3	Grading	300,326	282,275
6	Bridges, trestles, and culverts	76,881	52,017
8	Ties	61,507	30,755
9	Rails	107,027	92,058
10	Other track material	27,537	17,645
11	Ballast	60,040	44,966
12	Tracklaying and surfacing	71,282	51,323
13	Right-of-way fences	15,187	8,536
15	Crossings and signs	36,884	25,427
16	Station and office buildings	144,426	101,748
17	Roadway buildings	8,736	7,156
18	Water stations	3,613	2,679
20	Shops and engine houses	43,424	35,190
26	Telegraph and telephone lines	5,603	5,320
27	Signals and interlockers	75,535	63,191
29	Power-plant buildings	174,259	153,292
31	Power-transmission systems	6,220	5,886

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
32	Power-distribution systems	98,055	82,494
33	Power-line poles and fixtures	32,660	11,348
36	Paving	8,653	8,653
45	Power-plant machinery	342,503	269,629
46	Power-substation apparatus	80,110	55,262
	Total, 1, and 3 to 47, inclusive	1,856,138	1,482,520

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III. General Expenditures.

71	Organization expenses		
72	General officers and clerks		
73	Law	$27,842	$22,189
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	113,038	90,088
	Total, 71 to 77, inclusive	140,880	112,277
	Grand total, 1, and 3 to 77, inclusive	1,997,018	1,594,797

In Massachusetts, Owned but not Used, Leased to the Carrier.

I. Road.

1	Engineering	$1,638	$1,638
46	Power-substation apparatus	38,550	25,062
	Total, 1, and 3 to 47, inclusive	40,188	26,700

III. General Expenditures.

71	Organization expenses		
72	General officers and clerks		
73	Law	603	398
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	2,447	1,615
	Total, 71 to 77, inclusive	3,050	2,013
	Grand total, 1, and 3 to 77, inclusive	43,238	28,713

In Rhode Island, Owned but not Used, Leased to the Carrier.

I. Road.

1	Engineering	$74,032	$74,032
3	Grading	300,326	282,275
6	Bridges, trestles, and culverts	76,881	52,017
8	Ties	61,507	30,755
9	Rails	107,027	92,058
10	Other track material	27,537	17,645
11	Ballast	60,040	44,966
12	Tracklaying and surfacing	71,282	51,323
13	Right-of-way fences	15,187	8,536
15	Crossings and signs	36,884	25,427
16	Station and office buildings	144,426	101,748

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
17	Roadway buildings	8,736	7,156
18	Water stations	3,613	2,679
20	Shops and engine houses	43,424	35,190
26	Telegraph and telephone lines	5,603	5,320
27	Signals and interlockers	75,535	63,191
29	Power-plant buildings	174,259	153,292
31	Power-transmission systems	6,220	5,886
32	Power-distribution systems	98,055	82,494
33	Power-line poles and fixtures	32,660	11,348
36	Paving	8,653	8,653
139			
45	Power-plant machinery	342,503	269,629
46	Power-substation apparatus	41,560	30,200
	Total, 1, and 3 to 47 inclusive	1,815,950	1,455,820
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	27,239	21,791
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	110,591	88,473
	Total, 71 to 77, inclusive	137,830	110,264
	Grand total, 1, and 3 to 77, inclusive	1,953,780	1,566,084

Harlem River and Port Chester.

Owned but not Used, Leased to the Carrier.

I. Road.

1	Engineering	$623,409	$623,409
3	Grading	2,227,777	2,203,622
6	Bridges, trestles, and culverts	2,123,621	1,860,355
8	Ties	491,017	245,511
9	Rails	635,038	556,921
10	Other track material	301,903	202,653
11	Ballast	502,921	375,054
12	Tracklaying and surfacing	371,546	263,798
13	Right-of-way fences	4,919	2,318
15	Crossings and signs	2,619,528	2,343,822
16	Station and office buildings	1,779,111	1,468,542
17	Roadway buildings	20,849	12,632
18	Water stations	41,243	30,411
19	Fuel stations	20,160	6,587
20	Shops and engine houses	778,728	697,789
23	Wharves and docks	1,227,659	1,048,815
26	Telegraph and telephone lines	28,549	25,797
27	Signals and interlockers	535,899	473,993
29	Power-plant buildings	35,300	34,594
30	Power-station buildings	2,956	2,927
32	Power-distribution systems	725,976	675,642
33	Power-line poles and fixtures	706,594	661,464

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
34	Underground conduits	6,785	5,463
44	Shop machinery	274,233	228,447
45	Power-plant machinery	95,359	67,812
46	Power-substation apparatus	27,560	24,818
	Total, 1, and 3 to 47, inclusive	16,208,640	14,143,196
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	243,130	211,523
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	1,727,436	1,502,869
	Total, 71 to 77, inclusive	1,970,566	1,714,392
	Grand total, 1, and 3 to 77, inclusive	18,179,206	15,857,588
140	*Owned but not Used, Leased to the Interborough Rapid Transit Company.*		
	I. Road.		
1	Engineering	$254	$254
27	Signals and interlockers	6,344	3,454
	Total, 1, and 3 to 47, inclusive	6,598	3,708
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	99	55
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	603	338
	Total, 71 to 77, inclusive	702	393
	Grand total, 1, and 3 to 77, inclusive	7,300	4,101
	Holyoke and Westfield.		
	Owned but not Used, Leased to the Carrier.		
	I. Road.		
1	Engineering	$30,877	$30,877
3	Grading	226,853	222,509
6	Bridges, trestles, and culverts	167,983	112,237
8	Ties	41,524	20,762
9	Rails	49,496	43,844
10	Other track material	17,668	11,597
11	Ballast	12,417	9,313
12	Tracklaying and surfacing	33,273	23,624
13	Right-of-way fences	6,869	2,266
15	Crossings and signs	45,691	32,753
16	Station and office buildings	68,002	44,858
17	Roadway buildings	1,685	849
18	Water stations	1,080	779
19	Fuel stations	528	253

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
20	Shops and engine houses	11,846	7,945
26	Telegraph and telephone lines	985	905
27	Signals and interlockers	261	214
	Total, 1, and 3 to 47, inclusive	717,038	565,585
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	10,756	8,497
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	32,751	25,873
	Total, 71 to 77, inclusive	43,507	34,370
	Grand total, 1, and 3 to 77, inclusive	760,545	599,955
141	Providence and Worcester.		
	All Sections, Owned but not Used, Leased to the Carrier.		
	I. Road.		
1	Engineering	$246,873	$246,873
3	Grading	1,517,006	1,417,313
6	Bridges, trestles, and culverts	1,057,494	814,349
8	Ties	300,124	150,064
9	Rails	503,585	433,414
10	Other track material	159,842	106,086
11	Ballast	185,500	138,128
12	Tracklaying and surfacing	318,919	229,822
13	Right-of-way fences	50,965	24,239
15	Crossings and signs	263,230	190,102
16	Station and office buildings	625,602	430,238
17	Roadway buildings	35,671	24,586
18	Water stations	35,759	25,112
20	Shops and engine houses	303,691	215,083
24	Coal and ore wharves	215,087	103,512
26	Telegraph and telephone lines	4,521	3,978
27	Signals and interlockers	163,470	127,130
31	Power-transmission systems	610	577
32	Power-distribution systems	3,965	1,981
33	Power-line poles and fixtures	260	208
44	Shop machinery	63,474	25,498
	Total, 1, and 3 to 47, inclusive	6,055,648	4,708,293
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	90,834	70,618
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	553,184	430,067
	Total, 71 to 77, inclusive	644,018	500,685
	Grand total, 1, and 3 to 77, inclusive	6,699,666	5,208,978

In Massachusetts, Owned but not Used, Leased to the Carrier.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$112,897	$112,897
3	Grading	804,148	760,389
6	Bridges, trestles, and culverts	518,721	400,506
8	Ties	156,744	78,373
9	Rails	264,023	232,795
10	Other track material	76,649	53,122
11	Ballast	94,077	69,838
12	Tracklaying and surfacing	169,499	123,734
13	Right-of-way fences	36,955	17,692
15	Crossings and signs	172,732	129,426
16	Station and office buildings	196,634	149,042
17	Roadway buildings	21,854	14,166
18	Water stations	25,273	18,892
20	Shops and engine houses	18,687	8,724
26	Telegraph and telephone lines	2,703	2,321
27	Signals and interlockers	95,022	78,844
32	Power-distribution systems	2,673	1,336
	Total, 1, and 3 to 47, inclusive	2,769,291	2,252,097
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	41,539	33,647
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	252,975	204,910
	Total, 71 to 77, inclusive	294,514	238,557
	Grand total, 1, and 3 to 77, inclusive	3,063,805	2,490,654

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In Massachusetts, jointly owned but not used, owned, one-third each, by the Providence and Worcester, the Norwich and Worcester, and the Boston and Maine Railroad; the Providence and Worcester's owned portion, leased to the carrier, shown below.

	I. Road.		
1	Engineering	$6,859	$6,859
3	Grading	28,414	27,237
6	Bridges, trestles, and culverts	105,991	99,026
8	Ties	690	345
9	Rails	1,807	1,705
10	Other track material	1,303	1,013
11	Ballast	1,744	1,395
12	Tracklaying and surfacing	907	726
15	Crossings and signs	756	734
16	Station and office buildings	19,757	18,821
	Total, 1, and 3 to 47, inclusive	168,228	157,861

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	2,524	2,372
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	15,368	14,446
	Total, 71 to 77, inclusive	17,892	16,818
	Grand total, 1, and 3 to 77, inclusive	186,120	174,679
	In Rhode Island, Owned but not Used, Leased to the Carrier.		
	I. Road.		
1	Engineering	$133,976	$133,976
3	Grading	712,858	656,924
6	Bridges, trestles, and culverts	538,773	413,843
8	Ties	143,380	71,691
9	Rails	239,562	200,619
10	Other track material	83,193	52,964
11	Ballast	91,423	68,290
12	Tracklaying and surfacing	149,420	106,088
13	Right-of-way fences	14,010	6,547
15	Crossings and signs	90,498	60,676
16	Station and office buildings	428,968	281,196
17	Roadway buildings	13,817	10,420
18	Water stations	10,486	6,220
20	Shops and engine houses	285,004	206,359
24	Coal and ore wharves	215,087	103,512
26	Telegraph and telephone lines	1,818	1,657
27	Signals and interlockers	68,448	48,286
31	Power-transmission systems	610	577
32	Power-distribution systems	1,292	645
33	Power-line poles and fixtures	260	208
44	Shop machinery	63,474	25,498
	Total, 1, and 3 to 47, inclusive	3,286,357	2,456,196
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	49,295	36,971
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	300,209	225,157
	Total, 71 to 77, inclusive	349,504	262,128
	Grand total, 1, and 3 to 77, inclusive	3,635,861	2,718,324

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In Rhode Island, jointly owned but not used, owned, one-half each, by the Providence and Worcester and the Boston and Providence (R. I.), the Providence and Worcester's owned portion, leased to the carrier, shown below.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$67,692	$67,692
3	Grading	438,720	412,295
6	Bridges, trestles, and culverts	227,189	169,567
8	Ties	49,036	25,505
9	Rails	94,068	80,565
10	Other track material	41,387	26,439
11	Ballast	39,775	29,511
12	Tracklaying and surfacing	56,687	40,815
13	Right-of-way fences	11,701	8,954
15	Crossings and signs	324,671	267,597
16	Station and office buildings	207,087	177,923
17	Roadway buildings	2,459	1,044
18	Water stations	1,704	1,566
20	Shops and engine houses	32	12
26	Telegraph and telephone lines	5,491	5,069
27	Signals and interlockers	92,745	78,311
	Total, 1, and 3 to 47, inclusive	1,660,444	1,392,865
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	24,907	20,922
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	151,681	127,412
	Total, 71 to 77, inclusive	176,588	148,334
	Grand total, 1, and 3 to 77, inclusive	1,837,032	1,541,199

Chatham Railroad.

Owned but not Used, Leased to the Carrier.

	I. Road.		
1	Engineering	$7,137	$7,137
3	Grading	51,200	51,194
6	Bridges, trestles, and culverts	447	342
8	Ties	17,153	8,577
9	Rails	20,065	17,395
10	Other track material	4,816	3,200
11	Ballast	7,549	5,662
12	Tracklaying and surfacing	15,559	10,891
13	Right-of-way fences	2,311	847
15	Crossings and signs	4,446	2,825
16	Station and office buildings	28,030	19,613
18	Water stations	927	603
20	Shops and engine houses	4,740	2,928
27	Signals and interlockers	1,349	967
	Total, 1, and 3 to 47, inclusive	165,729	132,181

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	2,486	1,989
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	5,046	4,037
	Total, 71 to 77, inclusive	7,532	6,026
	Grand total, 1, and 3 to 77, inclusive	173,261	138,207

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Norwich and Worcester.

All Sections, Owned but not Used, Leased to the Carrier.

	I. Road.		
1	Engineering	$214,902	$214,902
3	Grading	1,795,193	1,688,722
5	Tunnels and subways	19,540	19,295
6	Bridges, trestles, and culverts	608,240	471,721
8	Ties	231,617	115,809
9	Rails	385,799	327,173
10	Other track material	117,156	75,145
11	Ballast	128,750	94,187
12	Tracklaying and surfacing	243,923	173,876
13	Right-of-way fences	79,476	39,185
15	Crossings and signs	265,007	210,044
16	Station and office buildings	514,392	371,633
17	Roadway buildings	10,308	7,646
18	Water stations	26,144	16,112
19	Fuel stations	18,253	11,556
20	Shops and engine houses	82,412	57,308
23	Wharves and docks	37,615	4,584
24	Coal and ore wharves	57,031	31,703
26	Telegraph and telephone lines	1,457	1,368
27	Signals and interlockers	57,546	51,330
31	Power-transmission systems	11,390	10,685
32	Power-distribution systems	57,420	49,372
33	Power-line poles and fixtures	26,925	13,155
	Total, 1, and 3 to 47, inclusive	4,990,496	4,056,511
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	74,858	61,050
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	379,902	309,827
	Total, 71 to 77, inclusive	454,760	370,877
	Grand total, 1, and 3 to 77, inclusive	5,445,256	4,427,388

In Connecticut, Owned but not Used, Leased to the Carrier.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$155,310	$155,310
3	Grading	1,403,550	1,308,592
5	Tunnels and subways	19,540	19,295
6	Bridges, trestles, and culverts	388,861	289,538
8	Ties	168,765	84,383
9	Rails	281,957	238,235
10	Other track material	84,542	54,053
11	Ballast	90,855	65,878
12	Tracklaying and surfacing	174,862	124,152
13	Right-of-way fences	59,124	29,250
15	Crossings and signs	182,883	143,766
16	Station and office buildings	310,543	220,262
17	Roadway buildings	7,823	5,793
18	Water stations	16,440	10,325
19	Fuel stations	18,253	11,556
20	Shops and engine houses	43,345	34,297
23	Wharves and docks	37,615	4,584
24	Coal and ore wharves	57,031	31,703
26	Telegraph and telephone lines	1,335	1,250
27	Signals and interlockers	8,497	7,230
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31	Power-transmission systems	$11,210	$10,539
32	Power-distribution systems	57,400	49,357
33	Power-line poles and fixtures	26,905	13,145
	Total, 1, and 3 to 47, inclusive	3,606,646	2,912,493
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law	54,100	43,821
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	274,556	222,390
	Total, 71 to 77, inclusive	328,656	266,211
	Grand total, 1, and 3 to 77, inclusive	3,935,302	3,178,704

In Massachusetts, Owned but not Used, Leased to the Carrier.

	I. Road.		
1	Engineering	$59,592	$59,592
3	Grading	391,643	380,130
6	Bridges, trestles, and culverts	219,379	182,183
8	Ties	62,852	31,426
9	Rails	103,842	88,938
10	Other track material	32,614	21,092
11	Ballast	37,895	28,309
12	Tracklaying and surfacing	69,061	49,724
13	Right-of-way fences	20,352	9,935
15	Crossings and signs	82,124	66,278
16	Station and office buildings	203,849	151,371

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
17	Roadway buildings	2,485	1,853
18	Water stations	9,704	5,787
20	Shops and engine houses	39,067	23,011
26	Telegraph and telephone lines	122	118
27	Signals and interlockers	49,049	44,100
31	Power-transmission systems	180	146
32	Power-distribution systems	20	15
33	Power-line poles and fixtures	20	10
	Total, 1, and 3 to 47, inclusive	1,383,850	1,144,018
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	20,758	17,229
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	105,346	87,437
	Total, 71 to 77, inclusive	126,104	104,666
	Grand total, 1, and 3 to 77, inclusive	1,509,954	1,248,684

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In Massachusetts, jointly owned but not used, owned, one-third each, by the Norwich and Worcester, the Providence and Worcester, and the Boston and Maine Railroad; the Norwich and Worcester's owned portion, leased to the carrier, shown below.

	I. Road.		
1	Engineering	$6,858	$6,858
3	Grading	28,414	27,236
6	Bridges, trestles, and culverts	105,990	99,025
8	Ties	691	346
9	Rails	1,808	1,705
10	Other track material	1,302	1,013
11	Ballast	1,745	1,396
12	Tracklaying and surfacing	908	726
15	Crossings and signs	756	734
16	Station and office buildings	19,757	18,820
	Total, 1, and 3 to 47, inclusive	168,229	157,859
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	2,523	2,372
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	15,368	14,446
	Total, 71 to 77, inclusive	17,891	16,818
	Grand total, 1, and 3 to 47, inclusive	186,120	174,677

In Connecticut, Owned but not Used, Leased to the Central Vermont Railway Company.

Account.	Classes.	Cost of reproduction new.	Cost of reproduction less depreciation.
	I. Road.		
1	Engineering	$1,675	$1,675
16	Station and office buildings	37,219	27,386
	Total, 1, and 3 to 47, inclusive	38,894	29,061
	III. General Expenditures.		
71	Organization expenses		
72	General officers and clerks		
73	Law		
74	Stationery and printing	583	437
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	2,961	2,221
	Total, 71 to 77, inclusive	3,544	2,658
	Grand total, 1, and 3 to 77, inclusive	42,438	31,719

Reference is made to the report of the accounting section for information respecting the predecessors of the carrier.

The Carrier.

Corporate History.

The following chart shows the titles of the corporations, the respective dates of incorporation, and for each predecessor the date of succession, the immediately succeeding corporation, and the manner of succession. Reference to each of these corporations is made in the last column by its respective number shown in the first column.

No.	Name.	Incorporation.	Succession.
1	The New York, New Haven and Hartford Rail-Road Company	In Connecticut and Massachusetts, Aug. 6, 1872; in Rhode Island, May 17, 1893.	
2	Hartford and New Haven Railroad Company	In Connecticut, May 29, 1833; in Massachusetts, 1839.	Combined with 10 to form 1, Aug. 6, 1872.
3	Hartford and Springfield Railroad Corporation.	In Massachusetts, Apr. 5, 1839	United with 2, May 10, 1847.
4	The Hartford and Springfield Railroad Company.	In Connecticut, June 4, 1835	Transferred to 3 under acts of Oct. 6, 1841, and Oct. 28, 1842.
5	The Branch Company	In Connecticut, May 27, 1845	Merged with 2, Apr. 2, 1850.
6	The Middletown Railroad Company	In Connecticut, June 7, 1844	United with 2, Apr. 24, 1850.
7	Middletown Extension Railroad Company	In Connecticut, June 4 ,1857	United with 2, Sept. 18, 1861.
8	New Britain and Middletown Railroad Company.	In Connecticut, June 2 1 1852	United with 2, Aug. 19, 1868.
9	Windsor Locks and Suffield Railroad Company.	In Connecticut, June 17, 1868	United with 2, May 17, 1871.
10	New York and New Haven Railroad Company	In Connecticut, June 7, 1844; in New York, May 11, 1846.	Combined with 2 to form 1, Aug. 6, 1872.
11	The Stamford and New Canaan Railroad Company.	In Connecticut, Apr. 25, 1882	Merged into 1, Oct. 1, 1890.
12	New Canaan Railroad Company	In Connecticut, May 30, 1866	Foreclosed to 11, May 7, 1883.
13	The Hartford and Connecticut Valley Railroad Company.	In Connecticut, Mar. 28, 1879	Merged with 1, Dec. 21, 1892.
14	Connecticut Valley Railroad Company	In Connecticut, July 17, 1868	Sold, foreclosed, to 13, June 30, 1880.
15	New York, Providence and Boston Railroad Company.	In Rhode Island, June 23, 1832	Merged into 1, Feb. 23, 1893.
16	The New York and Stonington Railroad Company.	In Connecticut, May 14, 1832	United with 15, July 1, 1833.
17	The New Haven, New London and Stonington Railroad Company.	In Connecticut, June 9, 1856	Sold to 15, Dec. 1, 1864.
18	New London and Stonington Railroad Company.	In Connecticut, June 29, 1852	Sold to 15, Dec. 1, 1864.
19	Rhode Island Central Railroad Company	In Rhode Island, May 29, 1879	Sold to 15, June 18, 1880.
20	Warwick Railroad Company	In Rhode Island, May 29, 1873	Sold to 15, June 16, 1880.
21	Pontiac Branch Railroad Company	In Rhode Island, May 28, 1875	Merged with 15, Feb. 18, 1885.
22	The Contractors to Rebuild and Support Union Wharf and Pier in New Haven.	In Connecticut, May 10, 1810	Merged with 1, Oct. 18, 1895.

No.	Name.	Incorporation.	Succession.
23	The Union Wharf Company in New Haven	In Connecticut, May 11, 1760	Merged with 1, Oct. 18, 1895.
24	The Company for Erecting and Supporting a Toll Bridge from New Haven to East Haven.	In Connecticut, Oct. 13, 1796	Merged with 1, Oct. 18, 1895.
25	Shore Line Railway	In Connecticut, June 29, 1864	Merged with 1, Mar. 18, 1897.
26	New Haven and New London Railroad Company.	In Connecticut, June 14, 1848	Sold to 25, June 14, 1865.
27	Housatonic Railroad Company	In Connecticut, June, 1836	Acquired by 1, Mar. 29, 1898.
28	New York, Housatonic and Northern Railroad Company.	In Connecticut and New York, July 1, 1864.	Conveyed to 27, Oct. 9, 1882.
29	Shepaug, Litchfield and Northern Railroad Company.	In Connecticut, May 10, 1887	Merged with 1, July 9, 1898.
30	Shepaug Railroad Company	In Connecticut, May 23, 1873	Sold to 29, June 1, 1887.
31	Shepaug Valley Railroad Company	In Connecticut, June 30, 1866	Succeeded by 30, May 23, 1873.
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32	The Danbury and Norwalk Railroad Company.	See 33	Merged with 1, Mar. 26, 1907.
33	The Fairfield County Railroad Company	In Connecticut, June 5, 1835	Name changed to 32, May 29, 1850.
34	Providence and Springfield Railroad Company.	See 35	Sold to 1, Oct. 30, 1905.
35	Woonasquatucket Railroad Company	In Rhode Island, Jan. 30, 1857	Name changed to 34, Apr. 23, 1872.
36	Woonsocket and Pascoag Railroad Company	In Rhode Island, June 15, 1887	Merged with 1, Apr. 16, 1907.
37	New Haven and Derby Railroad Company	In Connecticut, July 9, 1864	Merged with 1, Mar. 26, 1907.
38	The Middletown Meriden and Waterbury Railroad.	In Connecticut, Apr. 8, 1897	Merged with 1, Mar. 26, 1907.
39	The Meriden, Waterbury and Connecticut River Railroad Company.	In Connecticut, Mar. 10, 1887	Sold to incorporators of 38, May 31, 1896.
40	The Meriden and Cromwell Railroad Company	In Connecticut, July 10, 1882	Combined with 41 to form 39, June 9, 1888.
41	The Meriden and Waterbury Railroad Company.	In Connecticut, May 24, 1887	Combined with 40 to form 39, June 9, 1888.
42	The Rockville Railroad Company	See 43	Merged with 1, Mar. 26, 1907.
43	Rockville Branch Railroad Company	In Connecticut, June 26, 1857	Name changed to 42, July 3, 1863.
44	Rhode Island and Massachusetts Railroad Company (of R. I.).	See 45	Merged with 1, Apr. 16, 1907.
45	Rhode Island Mining Railroad Company	In Rhode Island, Mar. 9, 1865	Name changed to 44, Apr. 22, 1872.
46	Colchester Railroad Company	In Connecticut, June 22, 1876	Merged with 1, Mar. 16, 1907.

47	The Naugatuck Railroad Company	In Connecticut, June 12, 1845	Merged with 1, Jan. 31, 1906.
48	The Watertown and Waterbury Railroad Company.	In Connecticut, June 23, 1869	Foreclosed to 47, Mar. 8, 1893.
49	The Providence Terminal Company	See 50	Sold to 1, Dec. 29, 1906.
50	New York, Providence and Boston and Old Colony Railroad Terminal Company	In Rhode Island, May 28, 1891	Name changed to 49, Apr. 13, 1904.
51	Boston and New York Air Line Railroad Company.	In Connecticut, June 8, 1875	Merged with 1, Mar. 26, 1907.
52	New Haven, Middletown and Willimantic Railroad Company.	In Connecticut, July 24, 1867	Deeded to 51, July 8, 1875.
53	Pawtuxet Valley Railroad Company	In Rhode Island, June 19, 1868	Sold to 1, Feb. 5, 1907.
54	The Manufacturers' Railroad Company	See 55	Merged with 1, Apr. 30, 1907.
55	The Manufacturers' Street Railway Company.	In Connecticut, June 23, 1893	Name changed to 54, May 12, 1897.
56	The New England Railroad Company	In Connecticut, Mar. 7, 1895; New York, Apr. 27, 1895; Rhode Island, May 29, 1895; Massachusetts, June 5, 1895.	Deeded to 1, April, 1908.
57	The New York and New England Railroad Company.	In Massachusetts, May 15, 1873; in Rhode Island and Connecticut, May 29, 1873.	Sold to 56, Sept. 1, 1895.
58	The Hartford, Providence and Fishkill Railroad Company.	In Connecticut, July 23, 1849	Merged with 57, Nov. 1, 1879.
59	New York and Hartford Railroad Company	In Connecticut, June 12, 1845	Merged with 58, July 23, 1849.
60	Hartford and Providence Railroad Company.	In Connecticut, June 23, 1847	Merged with 58, July 23, 1849.
61	The Manchester Railroad Company	In Connecticut, June 4, 1833	Succeeded by 60, June 23, 1847.
62	Providence and Plainfield Railroad Company.	In Rhode Island, June 27, 1846	Merged with 58, June 24, 1851.
63	Boston, Hartford and Erie Railroad Company.	In Connecticut, June 25, 1863; in Massachusetts, 1868.	Acquired by 57, Sept. 30, 1874.
64	Southern Midland Railroad Company	See 65	Merged with 63, Sept. 8, 1863.
65	Midland Land Damage Company	In Massachusetts, Apr. 9, 1861	Name changed to 64, Mar. 28, 1863.
66	Midland Railroad Company (of 1858)	In Massachusetts, Mar. 19, 1858	Deeded to 65, June 14, 1862.
67	Boston and New York Central Railroad Company.	In Massachusetts and Connecticut, Apr. 30, 1852.	Deeded to 66, Nov. 1, 1858.
68	Southbridge and Blackstone Railroad Company.	In Massachusetts, May 1, 1849	Consolidated with 69 and 70 to form 67, Dec. 12, 1853.
69	Midland Railroad Company (of 1850)	In Massachusetts, May 2, 1850	Consolidated with 68 and 70 to form 67, Dec. 12, 1853.

No.	Name.	Incorporation.	Succession.
70	Norfolk County Railroad Company.....	In Massachusetts, Apr. 24, 1847.....	Consolidated with 68 and 69 to form 67, Dec. 12, 1853.
71	Walpole Railroad Company.....	In Massachusetts, Apr. 16, 1846.....	Merged with 70, July 19, 1847.
72	East Thompson Railroad Company.....	In Connecticut, June 25, 1853.....	Sold to 67, Nov. 1, 1858.
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73	Thompson and Willimantic Railroad Company.	In Connecticut, June 22, 1857.....	Deeded to 63, Dec. 8, 1863.
74	The Boston, Hartford and Erie Extension Railroad Company.	In New York, Oct. 1, 1863.....	Deeded to 63, June 7, 1864.
75	Boston, Hartford and Erie Ferry Railroad Company.	In New York, Jan. 5, 1864.....	Succeeded by 63, date unknown.
76	Medway Branch Railroad Company.....	In Massachusetts, May 1, 1849.....	Acquired by 63, May 12, 1864.
77	The New York and Boston Railroad Company.	In Connecticut, June 17, 1846.....	Merged with 65, Jan. 14, 1865.
78	Woonsocket Union Railroad Company.....	In Rhode Island, Aug. 9, 1850.....	Merged with 77, January, 1853.
79	Charles River Railroad Company.....	In Massachusetts, May 24, 1851.....	Merged with 77, Oct. 3, 1855.
80	Charles River Branch Railroad Company.....	In Massachusetts, May 1, 1849.....	Merged by 79, Nov. 1, 1853.
81	Bellingham Branch Railroad Company.....	In Massachusetts, Apr. 20, 1852.....	Location adopted by 77, 1853.
82	Springfield and New London Railroad Company.	In Massachusetts, Jan. 6, 1875.....	Merged with 57, July 29, 1887.
83	Connecticut Central Railroad Company.....	In Connecticut, July 6, 1871.....	Merged with 57, Dec. 12, 1887.
84	Newport and Wickford Railroad and Steamboat Company.	See 85.....	Deeded to 1, Nov. 1, 1909.
85	Wickford Railroad Company.....	In Rhode Island, June 3, 1864.....	Name changed to 84, Jan. 28, 1870.
86	New Haven and Northampton Company (of 1862).	In Massachusetts, Mar. 28, 1862, and Connecticut, July 7, 1862.	Merged with 1, Oct. 26, 1910.
87	New Haven and Northampton Company (of 1836).	In Massachusetts, Apr. 9, 1836; in Connecticut, June 2, 1836.	Consolidated with 90 to form 86, July 1, 1862.
88	President, Directors and Company of the Farmington Canal.	In Connecticut, May 30, 1822.....	Consolidated with 89 to form 87, Apr. 9, 1836.
89	Hampshire and Hampden Canal Company....	In Massachusetts, Feb. 24. 1853.....	Consolidated with 88 to form 87, Apr. 9, 1836.
90	Hampshire and Hampden Railroad Corporation.	In Massachusetts, May 23, 1853.....	Consolidated with 87 to form 86, July 1, 1862.
91	Hampden Railroad Company.....	In Massachusetts, May 20, 1852.....	Consolidated with 92 to form 90, May 25, 1853.
92	Northampton and Westfield Railroad Corporation.	In Massachusetts, May 22, 1852.....	Consolidated with 91 to form 90, May 25, 1853.

93	Farmington Valley Railroad Company	In Connecticut, June 18, 1852	Merged with 86, July 1, 1862.
94	Rhode Island and Massachusetts Railroad Company (of Mass.).	In Massachusetts, Sept. 26, 1876	Sold to 1, Oct. 26, 1910.
95	Berkshire Railroad Company (1905)	In Massachusetts, Mar. 23, 1905	Sold to 1, Oct. 18, 1910.
96	West Stockbridge Railroad Corporation	In Massachusetts, Apr. 5, 1836	Consolidated with 97 and 98 to form 95, June 30, 1905.
97	Berkshire Railroad Company (1837)	In Massachusetts, Apr. 13, 1837	Consolidated with 96 and 98 to form 95, June 30, 1905.
98	Stockbridge and Pittsfield Railroad Company	In Massachusetts, Mar. 17, 1847	Consolidated with 96 and 97 to form 95, June 30, 1905.
99	Milford, Franklin and Providence Railroad Company.	In Massachusetts, Apr. 21, 1882	Sold to 1, Dec. 19, 1910.
100	Milford and Woonsocket Railroad Company	In Massachusetts, May 2, 1855	Sold to 1, Dec. 19, 1910.
101	Hopkinton Railroad Company	In Massachusetts, June 1, 1870	Deeded to 100, May 16, 1884.
102	Hopkinton Branch Railroad Company	In Massachusetts, May 26, 1869	Consolidated with 103 to form 101, June 1, 1870.
103	Hopkinton and Milford Railroad Company	In Massachusetts, May 9, 1867	Consolidated with 102 to form 101, June 1, 1870.
104	The Consolidated Railroad Company	In Connecticut, 1901	Merged with 1, May 21, 1907.
105	The Torrington and Winchester Street Railway Company.	In Connecticut, 1905	Merged with 1, June 28, 1907.
106	The Meriden, Southington and Compounce Tramway Company.	In Connecticut, 1897	Merged with 1, June 28, 1907.
107	The Village Water Company of Suffield	In Connecticut, 1895	Merged with 1, Feb. 18, 1908.
108	The Stafford Springs Street Railway Company.	In Connecticut, 1901	Merged with 1, July 18, 1908.
109	The Farmington Street Railway Company	In Connecticut, 1899	Merged with 1, Dec. 31, 1909.
110	Roxbury Central Wharf Company	In Massachusetts, date unknown	Deeded all property to 1, date unknown.
111	South Bay Wharf and Terminal Company	In Massachusetts, date unknown	Deeded all property to 1, date unknown.

150 A special law of Connecticut, approved June 14, 1889, gave authority for the issue of stock by the carrier, in exchange for the stock of any railroad company whose property was held by the carrier under lease for a term as long as 50 years. All of the properties now owned, which have been merged or purchased by the carrier, have been held under lease except those of the four small companies owning terminal or water-front property in New Haven, two companies owning wharf and terminal property in Boston, the terminal property at Providence, and that of the Newport and Wickford Railroad and Steamboat Company. The various mergers and purchases were effected as shown in the above schedule.

The carrier acquired certain rights and properties of The Consolidated Railway Company, The Torrington and Winchester Street Railway Company, The Meriden, Southampton and Compounce Tramway Company, The Village Water Company of Suffield, The Stafford Springs Street Railway Company, and the Farmington Street Railway Company, which owned, leased, and operated urban and interurban electric railways, gas and electric lighting plants, water and power plants, and steamships and wharf property used in the operation thereof. The physical properties of these six companies have been sold, but the carrier is liable for various mortgages and other debts assumed, and may have some franchise or other rights originally enjoyed by these companies or their predecessors, but not conveyed with the physical property when sold by the carrier. For these reasons they are included in the corporate succession.

Development of Fixed Physical Property.

The following tabulation shows for mileage owned by the carrier on date of valuation, the termini, the company by whom constructed, and the date put into operation. The properties of the Hartford and New Haven Railroad Company and the New York and New Haven Railroad Company were acquired in the consolidation forming the carrier; the remaining properties were acquired by merger or purchase.

	Mileage.	
Hartford and New Haven Railroad Company, Sept. 30, 1872:		
Constructed by that company, New Haven to Hartford, Conn., 1839	36.50	
Constructdd by Hartford and Springfield Railroad Corporation, Hartford, Conn., to Springfield, Mass., 1844	26.00	
Constructed by the Branch Company, Hartford, Conn., to Connecticut River, 1847	0.87	
Constructed by the Middletown Railroad Company, Berlin to Middletown, Conn., 1850	9.00	
Constructed by Middletown Extension Railroad Company, Middletown, Conn., to Connecticut River, 1860	1.00	
Constructed by New Britain and Middletown Railroad Company, Berlin to New Britain, Conn., 1865	3.00	
Constructed by Windsor Locks and Suffield Railroad Company, Windsor Locks to Suffield, Conn., 1870	4.45	
		80.82
New York and New Haven Railroad Company, Sept. 30, 1872, constructed by that company, New Haven, Conn., to Woodlawn Junction, N. Y., 1848		62.00
The Stamford and New Canaan Railroad Company, Oct. 1, 1890, constructed by New Canaan Railroad Company, Stamford to New Canaan, Conn., 1868		8.30
151		
The Hartford and Connecticut Valley Railroad Company, Dec. 21, 1892, constructed by Connecticut Valley Railroad Company, Hartford to Fenwick, Conn., 1872		45.00
New York, Providence and Boston Railroad Company, Feb. 3, 1893:		
Constructed by that company—	Mileage.	
Providence, R. I., to Stonington, Conn., 1857	49.11	
Auburn to Providence, R. I., 1848	3.58	
Oakland Beach to Buttonwoods, R. I., 1881	1.60	
Constructed by the New Haven, New London and Stonington Railroad Company—		
Stonington to Groton, Conn., 1858	13.00	
Ferry, Groton to New London, Conn., 1858	.....	
Constructed by Warwick Railroad Company, Auburn to Oakland Beach, R. I., 1875	8.50	
Constructed by Pontiac Branch Railroad Company, Auburn to Pontiac, R. I., 1880	4.75	
		80.54
The contractors to Rebuild and Support Union Wharf and Pier in New Haven, Oct. 18, 1895, wharf rebuilt		.....
The Union Wharf Company in New Haven, Oct. 18, 1895, constructed by that company (and incorporators), Union Wharf at New Haven, Conn.		.....
The Company for Erecting and Supporting a Toll Bridge from New Haven to East Haven, Conn., constructed by that company, Tomlinson bridge and land (bridge sold in 1886 to city of New Haven, Conn.)		.....
Shore Line Railway, Mar. 18, 1897, constructed by New Haven and New London Railroad Company, New Haven to New London, Conn., 1852		50.00
Housatonic Railroad Company on Mar. 29, 1898, constructed by—		
Housatonic Railroad Company—	Mileage.	
Bridgeport to New Milford, Conn., 1840	35.00	
New Milford to Massachusetts State line, 1842	38.90	
Botsford to Huntington, Conn., 1888	9.79	
New York, Housatonic and Northern Railroad Company, Brookfield to Danbury, Conn., 1868	5.36	
		89.05

	Mileage.	
Shepaug, Litchfield and Northern Railroad Company on July 9, 1898; constructed by Shepaug Valley Railroad Company, Hawleyville to Litchfield, Conn.		32.00
The Danbury and Norwalk Railroad Company on Oct. 26 1905, constructed by that company:		
Danbury to South Norwalk, Conn., 1852	23.80	
South Norwalk to Wilson's Point, Conn., 1882	2.65	
Branchville to Ridgefield, Conn., 1870	3.97	
Hawleyville to Bethel, Conn., 1872	6.00	
Providence and Springfield Railroad Company on Oct. 30, 1905, constructed by that company:		
Providence to Pascoag, R. I., 1873	23.00	
Pascoag to Douglas Junction, R. I., 1893	7.00	
		30.00

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Woonsocket and Pascoag Railroad Company on Nov. 3, 1905, constructed by that company, Woonsocket to Harrisville, R. I., 1891		9.50
New Haven and Derby Railroad Company on Nov. 3, 1905, constructed by that company:	Mileage.	
New Haven to Ansonia, Conn., 1871	13.00	
Derby Junction to Huntington, Conn., 1888	3.97	
		16.97
The Middletown, Meriden ad Waterbury Railroad Company on Nov. 3, 1905, constructed by—		
The Meriden and Waterbury Railroad Company, Meriden to Waterbury, Conn., 1888	17.57	
The Meriden and Cromwell Railroad Company—		
Meriden to Westfield, Conn., 1885	4.50	
Westfield to Cromwell, Conn., 1885 (6 miles later abandoned)		
		22.07
The Rockville Railroad Company on Nov. 6, 1905, constructed by that company, Vernon to Rockville, Conn., 1863		4.43
Rhode Island and Massachusetts Railroad Company (of R. I.) on Nov. 3, 1905, constructed by that company, Valley Falls, R. I., to Massachusetts State line		8.90
Colchester Railroad Company, Dec. 16, 1905, constructed by that company, Colchester to Turnersville, Conn., 1877		3.50
The Naugatuck Railroad Company, Jan. 31, 1906:	Mileage	
Constructed by—		
The Naugatuck Railroad Company, Devon to Winstead, Conn., 1849	56.55	
The Watertown and Waterbury Railroad Company, Watertown to Waterbury, Conn., 1870	4.44	
		60.99
The Providence Terminal Company, Dec. 29, 1906, constructed by that company, tunnel and bridge at Providence, R. I., 1904		1.14
Boston and New York Air Line Railroad Company, Jan. 30, 1907, constructed by New Haven, Middletown and Willimantic Railroad Company, New Haven to Willimantic, Conn., 1873		50.00
Pawtuxet Valley Railroad Company, Feb. 5, 1907, constructed by that company:	Mileage	
Hope to River Point, R. I., 1874	3.20	
River Point to Pontiac, R. I., 1880	2.60	
		5.80
The Manufacturers' Railroad Company, Apr. 30, 1907:		
Constructed by—		
The Manufacturers' Railroad Company—		
Freight tracks in New Haven, Conn., 1905	0.50	
Freight extension, New Haven, Conn., 1902	.136	
The Manufacturers' Street Railway Company, freight tracks in New Haven, Conn., 1896	1.364	
		2.00

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The New England Railroad Company, Apr. 1, 1908:		
Constructed by—	Mileage.	
The New England Railroad Company, West Roxbury to Needham, Mass., 1906	4.53	
The New York and New England Railroad Company—		
Elwood to near Dedham, Mass., 1882	1.08	
St. James Avenue to Sumner Street, Springfield, Mass. (purchased from Boston and Albany Railroad Company)	2.00	
Dedham Junction to Dedham, Mass	1.53	
Dorance Street at Providence, R. I	.62	
Freight branch at Hartford, Conn	.67	
The Hartford, Providence and Fishkill Railroad Company—		
Willimantic to Hartford, Conn., 1849	31.50	
Hartford to Bristol, Conn., 1850	18.00	
Providence, R. I., to Willimantic, Conn., 1854	58.50	
Bristol to Waterbury, Conn., 1855	14.50	
Boston, Hartford and Erie Railroad Company, completed by The New York and New England Railroad Company—		
Waterbury, Conn., to New York line, 1882	36.47	
Fishkill, N. Y., to Connecticut line, 1882	39.78	
Boston, Hartford and Erie Railroad Company, Mechanicsville to Willimantic, Conn., 1872	26.23	
Southern Midland Railroad Company, completed by Boston, Hartford and Erie Railroad Company, East Thompson, Conn., to Southbridge, Mass., 1867	17.60	
Boston and New York Central Railroad Company, Boston to South Dedham, Mass., 1855	12.50	
Southbridge and Blackstone Railroad Company, completed by Boston and New York Central Railroad Company, Blackstone, Mass., to Mechanicsville, Conn	23.20	
Norfolk County Railroad Company, Dedham to Blackstone, Mass., 1849	25.75	
Boston, Hartford and Erie Ferry Railroad Company, ferry and land	.....	
Medway Branch Railroad Company, Medway to North Wrentham, Mass., 1852 (3 miles later abandoned)	.....	
The New York and Boston Railroad Company, Needham, Mass., to Woonsocket, R. I., 1863	24.77	
Charles River Branch Railroad Company—		
Cook Street to Needham, Mass., 1853	3.10	
Brookline to Cook Street, Mass., 1853 (5.30 miles later sold by The New York and New England Railroad Company)	.....	
Springfield and New London Railroad Company, Springfield, Mass., to Connecticut State Line, 1876	7.50	
154 Melrose to Rockville, Conn., 1876	7.30	
East Hartford, Conn., to Massachusetts State line, 1876	20.24	
		377.37
Newport and Wickford Railroad and Steamboat Company, Nov. 1, 1909, constructed by that company:		
Wickford Junction to Wickford Landing, R. I., 1871	3.30	
Steamboat	.....	
		3.30

	Mileage.	
New Haven and Northampton Company (of 1862), Oct. 26, 1910:		
Constructed by—		
Newport and Northampton Company (of 1862)—		
Northampton to Williamsburg, Mass., 1868	8.00	
Collinsville to New Hartford, Conn., 1876	6.15	
Northampton to Shelburn Junction, Mass., 1881	17.69	
South Deerfield to Turner's Falls, Mass., 1881	9.20	
New Haven and Northampton Company (of 1836)—		
New Haven to Granby, Conn., 1850	46.50	
Farmington to Collinsville, Conn., 1850	8.00	
Simsbury to Tariffville, Conn., 1850 (1 mile later abandoned)	.....	
President, directors and company of the Farmington Canal, canal property, 1835	.....	
Hampshire and Hampden Canal Company, canal property, 1835	.....	
Hampshire and Hampden Railroad Corporation, Northampton, Mass., to Connecticut State line, 1856	25.28	
Farmington Valley Railroad Company, Granby, Conn., to Massachusetts State line, 1855	4.50	
		126.32
Rhode Island and Massachusetts Railroad Company (of Mass.), Oct. 26, 1910, constructed by that company, Franklin, Mass., to Rhode Island State line, 1877	.....	5.00
Berkshire Railroad Company (1905), Oct. 28, 1910:		
Constructed by—		
West Stockbridge Railroad Corporation, West Stockbridge, Mass., to New York State line, 1844	1.75	
Berkshire Railroad Company (1837), West Stockbridge, Mass., to Connecticut State line, 1842	2.14	
Stockbridge and Pittsfield Railroad Company, Pittsfield to Vandeusenville, Mass., 1849	22.70	
		46.59
Milford, Franklin and Providence Railroad Company, Dec. 19, 1910, constructed by that company, Franklin to Bellingham, Mass., 1883	.....	4.60
Milford and Woonsocket Railroad Company, Dec. 19, 1910:		
Constructed by—		
Milford and Woonsocket Railroad Company, Milford to Bellingham Junction, Mass., 1868	3.88	
155 Hopkinton Railroad Company, Hopkinton Branch Railroad Company, Hopkinton and Milford Railroad Company, Milford to Ashland, Mass., 1872	1.60	
		15.48
Total recorded road mileage acquired		1,278.35
Total recorded road mileage acquired		1,278.35
Deduct for remeasurements and reclassifications		26.655
Total owned mileage		1,251.695
Leased to the Boston and Maine Railroad:		
Main track at Northampton, Mass	0.176	
Trackage agreement to the Central New England Railway Company (sole use on date of valuation):		
Danbury, Conn., to Hopewell, N. Y., and Wicopee Junction to Beacon, N. Y	34.984	
Total owned but not used		35.160
Total owned and used		1,216.535

The road mileage given in the foregoing table are taken from the records of the constructing companies. The New York and New England Railroad Company reduced its recorded road mileage 7.85 miles. The New England Railroad Company also reduced its recorded road mileage. Certain of the mileage acquired was reclassified as terminal property or yard tracks and sidings.

History of Corporate Financing.

Syndicating, banking, and other financial arrangements.—The principal financial transactions of the carrier were through a group of bankers composed of J. P. Morgan & Company, Kuhn, Loeb & Company, Kidder, Peabody & Company, and Lee Higginson & Company. Short-term notes have been placed with numerous other banks located principally within the territory served by the road.

The purchase of the capital stock of the New York, Ontario, and Western Railroad Company was made through Kuhn, Loeb & Company, but the money, about $14,000,000, was borrowed on six months 3½ per cent notes from William Rockefeller. Kuhn, Loeb & Company placed the so-called European loan in 1907, amounting to $27,985,000. This was the most heavily discounted of all of the carrier's loans, being sold at 90.905. A commission of 1⅜ per cent was allowed the bankers in addition to the discount, and other expenses were paid. The net return to the carrier was 88.929 per cent of par.

From 1872, when the carrier was formed, until 1883, there was no issue of funded debt, except $40,000 of 2-year notes in 1873. The debts of the constituent companies assumed in 1872 were paid off by 1875 and from that time to 1883 the carrier was free from debt. In 1883, 20-year, 4 per cent bonds were authorized to the amount of $5,000,000 but only $2,000,000 were issued. The year 1893 marked the beginning of the carrier's extensive borrowing, which continued until 1913.

The financial affairs of the carrier and its affiliated companies for the period July 1, 1903, to June 30, 1913, have been dealt with fully in the reports of this commission, *The New England Investigation*, 27 I. C. C. 560, and *In re Financial Transactions of the New York, New Haven and*
156 *Hartford Railroad Company*, 31 I. C. C. 32. Certain information on the Boston and Maine Railroad,

the Boston Railroad Holding Company, and the New York, Ontario and Western Railway Company, is given under these captions in the chapter on investments in other companies. The outline of the trolley-line financing is given herewith. Certain information on the New York, Westchester and Boston Railroad Company, Millbrook Company, and New England Navigation Company financing, together with the status under decree of United States Court will be found in the chapter on investments in other companies.

The only borrowing between the last-named year and the date of valuation has been on short-term notes, principally 1-year 5 per cent notes issued under a collateral-trust agreement, to meet maturing obligations, and on equipment-trust certificates at 5 and 6 per cent to purchase equipment.

Collateral-trust notes were eventually issued in certain financing originally attempted through convertible debentures. In October, 1913, the carrier proposed to issue convertible 6 per cent 20-year debentures to the amount of $67,552,000 to take up $40,000,000 of notes falling due on December 1, 1913, and $5,000,000 of funded debt maturing February 1, 1914, and for additional equipment. These were offered to the stockholders under defined rights of subscription. The carrier accepted a proposition made by J. P. Morgan & Company to underwrite this issue. The bankers agreed to take all debentures not taken under the subscription rights, and were to receive as compensation 2½ per cent of the principal amount ($67,552,000) to be issued. The proposed issue was approved by the Public Service Commission of Massachusetts, but the Supreme Judicial Court of that State annulled the commission's order, holding that a railroad corporation had no authority under the laws of Massachusetts to issue evidences of debt convertible into capital stock. The amounts received on subscriptions, about $4,000,000 were returned to the subscribers. The carrier then borrowed $20,000,000 on its 1-year 5 per cent notes and $10,000,000 on the 1-year 5 per cent notes of the Harlem River and Port Chester guaranteed by the carrier. These notes were secured by collateral and were taken by J. P. Morgan & Company, First National Bank of New York, National City Bank of New York, Kidder, Peabody & Company, and Lee Higginson & Company, the price being 97.68. Upon these notes falling due May 1,

1915, they were taken up in part with the proceeds of 1-year 5 per cent collateral notes for $27,000,000. The same group of bankers took these notes at 97.75, agreeing to offer them to the public at 99.25. The profit of 1½ per cent was to be divided 0.5 per cent to the bankers and 1 per cent to an underwriting syndicate. Any amount realized in excess of 99.25 was to be divided equally between the bankers and the carrier, but it does not appear that the carrier received anything in excess of the agreed price of 97.75.

Equipment-trust agreements were made subsequent to March, 1914, for the purchase of all-steel passenger equipment, two of which called series A and series AA, were put out prior to the date of valuation. These agreements are so framed that the payments made by the carrier, applicable alike to principal and to interest, are called rental and the certificates issued are certificates of the trustee that the holder is entitled to share in the trust. According to the agreements the trustee agrees to purchase from the vendor, the New England Car Company, the equipment described and to pay for it in part by delivering to the New England Car Company the carrier's initial payment, which is called advance rental, and in part by the delivery of the certificates. The carrier agrees with the trustee to lease the equipment upon terms described; the payments of rental, when all are made, but not before, to be considered purchase money and the equipment then to become the property of the carrier. By a separate agreement between the carrier and the New England Car Company, the
157 former agrees to hold the latter free from loss and to pay all expenses of the trust. These certificates have been sold at 98 and the carrier has charged its profit and loss account with the discount. The carrier did not, on date of valuation, include in its accounts any liability for the deferred payments under these trusts, maintaining that the liability was not its liability and that the payments were, in good faith, the payment of rents. The two trust agreements made prior to date of valuation covered 273 units, of which 200 were built by the Osgood Bradley Car Company, presumably under a contract of November 15, 1912, by which the carrier contracted with the Osgood Bradley Car Company to purchase each year for five years

100 all-steel passenger-train cars. The carrier, the New England Car Company, and the Osgood Bradley Car Company have entered into an agreement which, in effect, gives the New England Car Company the right to buy the cars contracted to be furnished to the carrier by the Osgood Bradley Car Company. The New England Car Company was incorporated shortly before the first trust agreement was made and has had no other business than that connected with these trusts. Its books are kept in the office of the vice president and comptroller of the carrier by one of his subordinates who, at the date of valuation, was its treasurer, and the assistant general counsel for the carrier is its president. On date of valuation no charge had been made to the investment account for the cost of this equipment.

Financing of trolley lines.—The term "trolley lines" is herein used to include urban and interurban electric railways. The financing of these trolley lines is involved with that of certain public utilities, water transportation, and other interests.

On date of valuation the carrier controlled, directly or indirectly, by ownership of capital stock, the following companies owning and operating trolley lines and other public utility properties, in the States of Connecticut, Massachusetts, New York, Rhode Island, and Vermont. It also holds other securities and notes of those companies and has made advances in open accounts to some of them. The amount shown after each name below is the total book investment of the carrier or its subsidiary.

Barkshire Street Railway Company	$9,936,156.03
Housatonic Power Company	1,240,000.00
The Rhode Island Company	27,582,337.41
The Vermont Company	1,417,664.31
Waterbury Gas Light Company	1,174,027.86
The Westchester Street Railroad Company	1,216,426.83
Total	42,566,612.44

The carrier owns all of the issued capital stock of the New England Navigation Company, aggregating $49,405,500, which holds the following:

The Connecticut Company (includes $32,000 of underlying liens)	$40,032,000.00
New England Investment and Security Company (controlling trolley lines in central Massachusetts)	13,631,750.00
Providence & Danielson Railway Company	616,483.03
Sea View Railroad Company	649,896.34
Shore Line Electric Railroad Company of New York (not operated)	117,000.00
Housatonic Power Company	2,985,978.45
Total	58,033,107.82

158 The Housatonic Power Company, controlled by the New England Navigation Company, holds the following:

Waterbury Gas Company	$851,458.12
Watertown Gas Company	50,000.00
Westport Water Company	92,500.00
Total	993,958.12

The total of the holdings of the carrier and the New England Navigation Company is $100,599,720.26. This includes the investment in the Housatonic Power Company, which, in turn, has investments in other companies as shown, of $993,958.12.

The carrier's interests in trolley lines, held directly or indirectly, may be divided into five groups; the trolleys in Connecticut, in Rhode Island, in Westchester County, New York; in central Massachusetts, and in western Massachusetts. The last group has lines extending into New York and Vermont. The carrier holds directly the lines in Rhode Island, in Westchester County, New York, and in western Massachusetts; the other two groups are held by the New England Navigation Company, and all of the stock of the latter is owned by the carrier.

The first investment in this class of property was made by the carrier in the year ended June 30, 1895, when it bought control of the Stamford Street Railway Company. This first investment of about $75,000 was followed in the next fiscal year by one of about $350,000, which secured control of the Meriden Electric Railroad Company. No further investments of this character were made until in the year ended June 30, 1903. In that year the carrier got control of The Worcester and Connecticut Eastern Railway Company and some related properties in course of building, through contracts with The Sanderson and Porter Company, which was engaged in constructing the lines acquired.

The acquisition of the Rhode Island trolleys and of those in central Massachusetts is described in the reports of this commission in *New England Investigation, supra,* 560, and *In re Financial Transactions of the New York, New Haven and Hartford Railroad Company, supra.*

The acquisition of the Worcester and Connecticut Eastern Railway Company marked the beginning of that system which is usually called the "Connecticut trolleys." This company was originally incorporated as The Thompson Tramway Company by special act of the Legislature of Connecticut in 1901. The name was changed in 1902 to Worcester and Connecticut Eastern Railway Company. In 1904 the name was changed to The Consolidated Railway Company and the powers enlarged.

The Consolidated Railway Company acquired by purchase from the New England Navigation Company steamships and wharf property used in the operation thereof. It also acquired the rights, franchises, and property of other companies, named below, which owned, leased, and operated urban and interurban electric railways, gas and electric lighting plants, and water and power plants. The total mileage of electric railways operated by The Consolidated Railway Company was about 361. The names indented are the names of companies absorbed by the companies which were absorbed by The Consolidated Railway Company and the dates shown are the dates upon which each was acquired by its successor.

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The People's Tramway Company	Sept. 29,	1902
The Putnam and Thompson Street Railway Company	Oct. 10,	1899
The Danielson and Norwich Street Railway Company	Sept. 29,	1902
The Winchester Avenue Railroad Company	Mar. 20,	1904
New Haven and West Haven Horse Railroad Company		1892
The Fair Haven and Westville Railroad Company	May 23,	1904
New Haven Street Railway Company		1898
State Street Horse Railroad Company		1893
New Haven and Morris Cove Railroad Company		1893
Edgewood Horse Railroad Company		1894
Lake Saltonstall Railroad Company		1894
New Haven and East Haven River Railway Company		1898
New Haven and Centreville Street Railway Company		1898
New Haven and Centreville Horse Railroad Company		1893
The Wallingford Tramway Company	May 14,	1904
Meriden Electric Railroad Company	June 29,	1904
Meriden Horse Railroad Company		1895
The Norwich Street Railway Company	Sept. 29,	1904
The Norwich Horse Railroad Company		1875
The Montville Street Railway Company	Sept. 27,	1904
New London Street Railway Company	Oct. 22,	1904
The Middletown Street Railway Company	Nov. 28,	1904

The Portland Street Railway	1898
The Hartford Street Railway Company	Sept. 19, 1905
The Newington Tramway Company	1897
The East Hartford and Glastonbury Street Railway Company	Sept. 19, 1905
The Greenwich Tramway Company	Sept. 19, 1905
The Branford Lighting and Water Company	Sept. 19, 1905
Stamford Street Railway Company	Sept. 19, 1905
The Suffield Street Railway Company	Sept. 19, 1905
Willimantic Traction Company	Dec. 6, 1905
The Hartford and Middletown Street Railway Company	Jan. 15, 1906
The Hartford, Manchester and Rockville Tramway Company	Mar. 23, 1906
The Waterbury and Pomerang Valley Railroad Company	Apr. 22, 1907
The Woodbury and Seymour Street Railway Company	1906
The Woodbury and Waterbury Street Railway Company	1906

The plan generally followed was to acquire all or nearly all of the capital stock and then purchase the physical property, assume the debts, take the current assets, and distribute the proceeds in liquidation to the holders of the stock.

The Consolidated Railway Company held, and brought to the carrier, under lease, the property of the following companies:

South Manchester Light, Power and Tramway Company (Lease for 25 years from May 15, 1895, acquired with the property of The Hartford, Manchester and Rockville Tramway Company.)	Mar. 23, 1904
The West Shore Railway Company (Lease for 99 years from Dec. 15, 1895, acquired with the property of The Winchester Avenue Railroad Company.)	Mar. 20, 1904
Connecticut Railway and Lighting Company (Leased Dec. 19, 1906, for 999 years from Aug. 1, 1906.)	Aug. 1, 1906

160 The Connecticut Railway and Lighting Company had acquired prior to the date of this lease, and at that date held, the franchises originally granted to and the property developed by, the following corporation- of Connecticut:

Bridgeport and West Stratford Horse Railroad Company.
Bridgeport Horse Railroad Company.
Bridgeport Railway Company.
Bridgeport Traction Company.
Birmingham and Ansonia Horse Railway Company.
Central Railway and Lighting Company.
Cheshire Street Railway Company.
Connecticut Electric Company.
Connecticut Lighting and Power Company.
Derby and Ansonia Street Railway Company.
Derby Horse Railway Company.
Derby Street Railway Company.
East End Railway Company.
Gas Supply Company.

Greenwich Gas and Electric Lighting Company.
Milford Street Railway Company.
Naugatuck Electric Light Company.
Naugatuck Valley Electric Railway Company.
New Britain and Schuyler Electric Light Company.
New Britain Electric Light Company.
Norwalk and South Norwalk Electric Light Company.
Norwalk, Bridgeport and Bethel Traction Company.
Norwalk Gas Light Company.
Norwalk Tramway Company.
Plainsville Electric Light and Power Company.
Shelton Street Railway Company.
Southington and Plantsville Tramway Company.
Thomaston and Watertown Electric Railway Company.
Thomaston Tramway Company.

Upon acquisition of the property of The Consolidated Railway Company the carrier delivered it to other companies for operation, as agents for the carrier. The steamships and related property were delivered to The New England Steamship Company, the trolley lines to The Connecticut Company, and the lighting, water, and power plants to the Housatonic Power Company. In September, 1907, the property operated by The New England Steamship Company was sold to it and at February 28, 1910, the other owned properties were sold, and the leased properties sublet, to the operating companies.

From the property acquired, three short pieces of electric railway were retained by the carrier; a part of The Greenwich Tramway Company extending from the Mianus River in Connecticut to the New York State line, about 5.6 miles; a part of The Suffield Street Railway Company extending from a point just south of Suffield, Conn., to the Massachusetts State line, about 4.7 miles; and a part of The People's Tramway Company extending from West Thompson, Conn., to North Grosvenordale, about 5.9 miles. The carrier's recorded investment in these three pieces of electric railway is in the balance sheet account for miscellaneous physical property.

On December 19, 1906, The Consolidated Railway Company took the property of the Connecticut Railway and Lighting Company under a lease for 999 years to be effective

from August 1, 1906. This property comprised about
161 150 miles of trolley lines, and gas, water, and power plants. This lease was concurrent with other transactions in which The Consolidated Railway Company issued its 4 per cent debentures to the amount of $1,149,000 for the securities of the Housatonic Power Company, New Milford Power Company, and The Meriden, Southington and Compounce Tramway Company; acquired certain rights in a lease of the property of the Waterbury Gas Light Company; and the carrier acquired control of the Rhode Island trolleys. All of these transactions were with the United Gas and Improvement Company.

The Consolidated Railway Company was merged with the carrier on May 31, 1907. Its funded and unfunded debt, $38,422,000, was assumed and its stock, $30,000,000, became an equal amount of stock of the carrier. All of its assets were taken and the physical property was divided, the trolley lines, both owned and leased, going to The Connecticut Company, the steamships and wharf property to The New England Steamship Company, and the other public utilities to the Housatonic Power Company, for operation as agents of the carrier. The carrier held, either directly or through the New England Navigation Company, stock control of the three agents.

About 15 miles of electric railway was retained by the carrier and its investment therein appears in the balance sheet account for miscellaneous physical property. The balance of the property owned by the carrier and operated by these agents was sold, and the leased property sublet, to them, payment for the property sold being made in the capital stock of the purchasing companies. Many of the companies theretofore merged, or otherwise absorbed by The Consolidated Railway Company or the carrier had issued mortgages which were assumed by the absorbing companies and all of these became obligations of the carrier. The property pledged was sold to The Connecticut Company and the Housatonic Power Company free from debt. The carrier agreed to hold the purchasing companies harmless from loss on account of the mortgages, to pay the interest as it fell due, and to discharge the debt at maturity. This funded debt on date of valuation amounts to $18,330,000 and the annual interest charge is $771,020.

The property held under lease was sublet to the two purchasing companies upon substantially the same terms under which the carrier held it. The payment for the use of the property of the Connecticut Railway and Lighting Company which the carrier was obliged to make, was divided, The Connecticut Company paying three-fourths and the Housatonic Power Company one-fourth.

The book value of the property of these classes, excluding the steamship and wharf property acquired by the carrier to February 28, 1910, when it was sold, was as follows:

Acquisition cost of properties purchased		$27,414,342.16
Additional charges in connection with these acquisitions		200,000.00
Equipment received with leased properties		869,018.01
Expenditures for additions and betterments		5,918,886.73
Cost of trolley facilities on steam-road property		910,699.09
		36,312,945.99
Less—		
Accrued depreciation on trolley facilities on steam-road property	$12,900.74	
Profit on liquidated securities applied to cost of property	108,612.56	121,513.30

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Book cost of The Connecticut Company trolleys owned	$36,191,432.69
Improvements on leased trolleys and lighting plants and advances to lessor companies therefor	2,266,609.36
Investments in companies amounting to less than control	164,854.98
Investment in The Connecticut Company	584,587.66
Total	39,207,484.69

The carrier sold to The Connecticut Company property of the book value of $36,520,640.71, which may be briefly described as follows:

Book cost of properties acquired	$26,620,553.28
Subsequent expenditures thereon, including equipment purchased	6,553,323.79
Leased equipment taken over	869,018.01
Improvements on leased lines	1,156,041.32
Capital stock of the West Shore Railroad Company	37,426.72
Open account with The Connecticut Company representing its liability to the carrier as operating agent, canceled	673,359.28
Open account with The Connecticut Company representing advances for additions and betterments	309,587.66
Power house at Stamford, including site	100,306.11
Car barn at Stamford, including site	45,472.81
Power house at Berlin, including site	155,551.73
Total	36,520,640.71

It was agreed that deferred maintenance amounted to	4,702,390.64
This was the engineers' estimate of the amount necessary to "rehabilitate" the property sold and the carrier gave The Connecticut Company a demand note for that amount. The total book values thus transferred to The Connecticut Company were	41,223,031.35

The Connecticut Company assumed liabilities as follows:

The lessee's liability to the lessor, Connecticut Railway and Lighting Company, for net current assets taken at the date of the lease	629,013.34
The lessee's liability to the lessor for equipment taken at the date of the lease:	
Connecticut Railway and Lighting Company	860,918.01
West Shore Railway Company	8,100.00
Stock issued to the carrier for the remainder, 397,250 shares at $100 per share	39,725,000.00
Total	41,223,031.35

Property of the book value of $1,692,528.11 was sold to the Housatonic Power Company and it assumed a deferred liability to the United Gas and Improvement Company of $195,305.73. The carrier gave its demand note for $502,777.62, being the deferred maintenance estimated, and received the Housatonic Power Company stock of the par value of $2,000,000.

A summary of these transactions is as follows:

The carrier acquired property having a book value of $39,207,484.69, of which it retained		$1,554,692.65
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Miscellaneous electric properties:		
The Suffield Street Railway Company	$91,645.06	
Thompson line (estimated cost)	150,000.00	
Mianus line	127,560.00	
Street-railway facilities on steam-road lines	783,059.33	
Capital stock of the Bristol and Plainville Tramway Company	127,428.26	
Capital stock of The Connecticut Company	275,000.00	
Sold to The Connecticut Company	36,520,640.71	
Less working capital furnished	673,359.28	
		$35,847,281.43
Sold to the Housatonic Power Company		1,692,528.11
Sold to the New York and Stamford Railway Company:		
Equipment in use on that line		112,982.50
Total		39,207,484.69

The capital stock of the Connecticut Company and the Housatonic Power Company received in these transactions was sold to the New England Navigation Company, where it was held on date of valuation.

Capitalization.—The carrier issued or assumed capital securities to the total of $498,085,860 and retired $124,224,510 par value, leaving outstanding on date of valuation $373,861,350, as follows:

	Issued or assumed.	Retired.	Outstanding.
Capital stock	$180,017,000	$22,899,100	$157,117,900
Funded debt issued	216,288,060	74,508,610	141,779,450
Funded debt assumed in acquisition of steam roads	43,871,800	7,136,800	36,735,000
Funded debt assumed in acquisition of trolley lines and other property	57,909,000	19,680,000	38,229,000
Total	498,085,860	124,224,510	373,861,350

The carrier reacquired and holds $2,463,350, making amount in the hands of the public $371,398,000. The total outstanding is as shown on the balance sheet and includes the amount held by the carrier. The item $4,100, funded debt matured unpaid, included as a part of that account in the balance sheet, is here included with the amount retired.

The accounts on date of valuation do not include funded debt of the par value of $4,746,000 outstanding on that date, which amount represents $1,500,000 first-mortgage, 50-year The Boston Terminal Company bonds, dated April 1, 1889, of The New York and New England Railroad Company, together with equipment-trust certificates of the carrier, series A, 5 per cent, dated April 1, 1914, of par value $2,324,000, and series AA, 6 per cent, dated November 2, 1914, of par value $922,000. If this amount be added to the long-term debt entered on the balance sheet, the total of capital stock and funded debt outstanding on date of valuation would be $378,607,350. These totals do not include $20,000,000 of 1-year, 5 per cent, collateral gold notes put out in May, 1914, which are treated herein under notes payable. These notes were redeemed in May, 1915, with a part of the proceeds of an issue of 1-year notes amounting to $27,000,000.

164 The considerations representing securities issued or assumed are as follows:

Par value issued or assumed.	Consideration.	Recorded value of consideration.
$270,683,760.00	Cash	$287,843,536.57
79,694,200.00	Property of steam roads merged or purchased	79,694,077.46
86,350,200.00	Property of trolley lines and public utilities	95,023,700.00
11,057,100.00	Securities of leased and controlled roads	11,057,100.00
19,899,000.00	Notes of the New England Navigation Company	19,899,000.00
600,000.00	Retirement of notes payable	600,000.00
100,000.00	Retirement of debenture certificates	100,000.00
29,701,600.00	Stock issued in conversion of debenture certificates	36,446,450.00
498,085,860.00	Total	530,663,864.03
977,641.36	Premium funded debt paid in cash, credited to profit and loss.	
	Discount on funded debt, charged to profit and loss	2,848,985.75
	Commissions on funded debt:	
	Charged to operating expenses	92,291.25
	Charged to profit and loss	416,204.87
	Expenses of issuing funded debt, net charges to profit and loss	154,347.55
19,693,964.63	Premium on stock paid in cash; credited, $8,531,664.63 to profit and loss and $11,162,300 to premium on capital stock.	
8,673,500.00	Excess book value of consolidated railway debentures acquired over par value of stock issued therefor, credited to profit and loss.	
6,744,850.00	Excess book value of convertible debenture certificates over par value of stock issued in conversion, credited to premium on capital stock.	
	Excess par value of stock issued in respect to the property of the Stamford and New Canaan Railroad Company over the book value of the property acquired.	122.54
534,175,815.99		534,175,815.99

The premium on capital stock, as it appears on the balance sheet, is $19,282,887.50, or $1,375,737.50 more than the sum of the items here shown credited to that account. This difference is the net premium realized on sales of treasury stock made through the New England Navigation Company, which are more fully described hereinafter as capital stock reacquired and canceled.

The considerations given in retirement are as follows:

Par value retired.	Consideration.	Recorded value of consideration.
$42,282,560.00	Cash	$42,282,560.00
2,910,000.00	Property	2,910,000.00
36,578,750.00	Covertible debentures retired by conversion to stock	29,833,900.00
19,449,000.00	Securities of merged or purchased companies held and canceled upon acquisition of the property represented	19,436,950.00

Par value retired.	Consideration.	Recorded value of consideration.
1,000.00	Bond not presented for redemption	
100,000.00	Debenture certificates retired by other debentures	100,000.00
22,899,100.00	Stock retired for other securities	36,688,023.95
4,100.00	Funded debt matured unpaid	4,100.00
124,224,510.00	Total	131,255,533.95
	Excess of par value of convertible debentures retired over par value of stock given in exchange (credited to premium on capital stock)	6,744,850.00
	Difference between the cost and the par value of securities of merged companies acquired and canceled upon acquisition of the property by which they were secured, credited to investment in road and equipment	12,050.00
	Par value of a bond not presented for redemption, credited to profit and loss	1,000.00
13,788,923.95	Excess of the book value of capital stock reacquired and canceled over the par value thereof; charged, $13,720,151.50 to premium on capital stock and $68,772.45 to profit and loss.	
138,013,433.95		138,013,433.95

The stock shown as given for debenture certificates, $29,833,900, is in excess of the stock shown as issued for that purpose, $29,701,600, by an amount of $132,300, which represents stock reacquired and used in the conversion.

165 Th- funded debt outstanding on date of valuation consisted in detail of the following:

Issued by the carrier:	
Nonconvertible 4 per cent 50-year debentures, dated Mar. 1, 1897	$5,000,000
Nonconvertible 3½ per cent 46-year debentures, dated Mar. 1, 1901	5,000,000
Nonconvertible 3½ per cent 50-year debentures, dated Apr. 1, 1904	10,000,000
Harlem River and Port Chester 4 per cent 50-year first-mortgage bonds, dated May 16, 1904	15,000,000
Nonconvertible 4 per cent 50-year debentures, dated July 1, 1905	15,000,000
Convertible 3½ per cent 50-year debentures, dated Jan. 1, 1906	9,765,450
Nonconvertible 4 per cent 50-year debentures, dated May, 1, 1906	15,000,000
Nonconvertible 4 per cent 15-year debentures, dated Apr. 1, 1907	27,985,000
Convertible 6 per cent 40-year debentures, dated Jan. 15, 1908	39,029,000
Total	141,779,450
Assumed in the acquisition of railway property:	
General-mortgage 4 per cent 50-year bonds, dated Apr. 1, 1892, of the New York, Providence and Boston Railroad Company	1,000,000
Consolidated-mortgage 5 per cent 50-year bonds, dated Nov. 1, 1887, of the Housatonic Railroad Company	2,839,000
Consolidated-mortgage 5-6 per cent 40-year bonds, dated May 19, 1880, of The Danbury and Norwalk Railroad Company	500,000
General-mortgage 5 per cent 42-year bonds, dated Mar. 31, 1883, of The Danbury and Norwalk Railroad Company	150,000

First refunding mortgage 4 per cent 50-year bonds, dated June 1, 1905, of the Danbury and Norwalk Railroad Company	350,000
First-mortgage 5 per cent 30-year bonds, dated June 1, 1892, of the Providence and Springfield Railroad Company	750,000
Consolidated-mortgage 5 per cent 30-year bonds, dated May 1, 1888, of the New Haven and Derby Railroad Company	575,000
Nonconvertible 3½ per cent 28-year debentures, dated Oct. 1, 1902, of The Naugatuck Railroad Company	234,000
First-mortgage 4 per cent 50-year bonds, dated Apr. 11, 1904, of The Naugatuck Railroad Company	2,500,000
First-mortgage 4 per cent 50-year bonds, dated Mar. 1, 1906, of The Providence Terminal Company	4,000,000
First-mortgage 4 per cent 50-year bonds, dated Aug. 1, 1905, of the Boston and New York Air Line Railroad Company	3,777,000
First-mortgage 4 per cent 25-year bonds, dated May 10, 1900, of the Pawtuxet Valley Railroad Company	160,000
Consolidated 4-5 per cent 50-year bonds, dated Sept. 2, 1895, of The New England Railroad Company	17,500,000
Refunding consolidated-mortgage 4 per cent 50-year bonds, dated June 1, 1905, of the New Haven and Northampton Company (of 1862)	2,400,000
Total	36,735,000

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Assumed in acquisition of trolley lines and other property:

First-mortgage 4½ per cent 40-year bonds, dated Oct. 1, 1902, of The Worcester and Connecticut Eastern Railway Company	$1,992,000
Nonconvertible 4 per cent 40-year debentures, dated July 1, 1904, of the Consolidated Railway Company	4,255,000
Nonconvertible 4 per cent 50-year debentures, dated Jan. 2, 1905, of the Consolidated Railway Company	2,309,000
Nonconvertible 3-4 per cent 25-year debentures, dated Feb. 7, 1905, of the Consolidated Railway Company	972,000
Nonconvertible 4 per cent 50-year debentures, dated Apr. 1, 1905, of the Consolidated Railway Company	1,340,000
Nonconvertible 4 per cent 50-year debentures, dated Jan. 1, 1906, of the Consolidated Railway Company	2,011,000
First-mortgage 5 per cent bonds, due Oct. 1, 1937, of the Branford Electric Company	63,000
First-mortgage 5 per cent 30-year bonds, dated July 1, 1901, of the Greenwich Tramway Company	320,000
First-mortgage 5 per cent 30-year bonds, dated Oct. 1, 1894, of The Hartford, Manchester and Rockville Railway Company	200,000
Registered 4 per cent 30-year bonds, series M, dated Sept. 1, 1900, of The Hartford Street Railway	165,000
First-mortgage 4 per cent 30-year bonds, dated Sept. 1, 1900, of The Hartford Street Railway	2,500,000
Consolidated-mortgage 5 per cent 30-year bonds, dated Dec. 28, 1893, of the Meriden Horse Railroad Company	415,000
First-mortgage 5 per cent 20-year bonds, dated May 1, 1900, of The Montville Street Railway Company	250,000
First-mortgage 5 per cent 40-year bonds, dated Sept. 1, 1893, of The New Haven and Centerville Street Railway Company	283,000
First-mortgage 5 per cent 30-year bonds, dated Nov. 13, 1893, of The New London Street Railway Company	150,000
First-mortgage 5 per cent 30-year bonds, dated Nov. 13, 1893, of The Norwich Street Railway Company	350,000
First-mortgage 5 per cent 20-year bonds, dated Nov. 1, 1896, of The Portland Street Railway Company	30,000
First-mortgage 5 per cent 20-year bonds, dated Dec. 1, 1897, of The Torrington and Winchester Street Railway Company	150,000

First-mortgage 5 per cent 30-year bonds, dated May 17, 1900, of The Meriden, Southington and Compounce Tramway Company	175,000
First-mortgage 5 per cent 50-year bonds, dated Aug. 15, 1906, of The Stafford Springs Street Railway Company	400,000
Gold 4 per cent 50-year debentures, dated May 16, 1907, of The Providence Securities Company	19,899,000
Total	38,229,000

Funded debt liability.—The carrier, as hereinbefore stated, has three issues of debt secured by mortgage or other form of pledge on property held and used by the carrier for its purposes as a common carrier which are not included in the balance sheet as funded debt, aggregating $4,746,000 par value on date of valuation.

167 The New York and New England Railroad Company issued first-mortgage 4 per cent 50-year bonds, dated April 1, 1889, in amount $1,500,000, in the acquisition of real estate in Boston for use as a terminal at that point. When the property was reorganized, in 1895, as The New England Railroad Company, these bonds were reported by the new company as a liability assumed. For some reason not clearly explained the liability as it was of record was canceled when the property was merged with the carrier.

The mortgage was not discharged nor the property surrendered. The interest on these bonds has been paid by The New England Railroad Company or by the carrier, as lessee of The New England Railroad Company, or as its successor after the merger. The carrier charges this interest to its income as interest on unfunded debt. The property pledged was segregated in amounts as follows: $400,000 on the "Fifty acre lot," $800,000 on the "Twenty-five acre lot," $86,000 on the "Twelve acre lot," $100,000 on Drakes Wharf, and $114,000 on Curtis Wharf. On May 14, 1899, the mortgage, as it related to the two wharf properties was released, and the property sold. The New England Railroad Company paid to the trustees $214,000 to be invested for the benefit of the bondholders in lieu of the mortgaged property sold. By a series of deeds and mortgage agreements The New England Railroad Company borrowed the sum it had paid to the trustees and the mortgage was made to apply to two other parcels of land in Boston. All of the land pledged for this debt became the property of the carrier when it merged The New England Railroad Company, subject to the lien of this mortgage. This land is a valuable part of the

carrier's Boston terminals. If there is default under the mortgage the pledged property may be taken at foreclosure. There is no other interest in the property except that of the carrier and the bondholders, and it is claimed that this is only a contingent and not a direct liability. The consolidated mortgage of The New England Railroad Company is a second lien on this property and the carrier recognizes its liability under this second mortgage, but not under the first. No explanation of this matter is offered by the carrier except that the procedure followed was recommended by counsel.

The trustee, under equipment trust agreements between the trustee and a vendor, issued equipment-trust certificates to cover a part of the cost of equipment leased by the trustee to the carrier under a lease and conditional sale agreement. These certificates were outstanding on date of valuation in the aggregate of $3,246,000, series A, bearing 5 per cent, and dated April 1, 1914, in amount $2,324,000, and series AA, bearing 6 per cent, and dated November 2, 1914, in amount $922,000. It is provided that when all of the payments, called rents, are made, that then, but not before, those payments shall be considered as payments of purchase money, and the equipment shall become the property of the carrier. At the date of valuation the carrier had charged all payments applicable to the principal of these certificates to other unadjusted debits. All payments applicable to interest were charged to income as hire of equipment. Depreciation accrued on this equipment was charged to operating expenses and credited to other unadjusted credits. Subsequently to the date of valuation the accounting processes have been amended to conform to the prescribed classification. Under an agreement with the vendor, the New England Car Company, the carrier agreed to hold such New England Car Company free from loss in connection with these trust agreements and accordingly accepted liability for the discount suffered in the sale of the certificates.

The sales were made at 98 and the discount on series A, $49,800, and that on series AA, $19,400, a total of $69,200, was charged by the carrier to profit and loss.

168 *Funded debt matured unpaid.*—The balance sheet shows $6,512.68 as funded debt matured unpaid, of which $4,100 represents convertible 4 per cent debentures, due April 1, 1908, that were not offered for redemption,

properly so classified. The other two items, $1,725, bond redemption account of the Boston and New York Air Line Railroad Company, and $687.68, scrip redemption account of that company, represents unclaimed amounts due in liquidation of the Boston and New York Air Line Railroad Company.

Loans and bills payable.—Loans and bills payable have been issued in the aggregate of $381,428,418.88, of which the amount of $30,139,000 is outstanding on date of valuation. The considerations given at issue and retirement were as follows:

Received at issue.	Consideration.	Given in retirement.
$303,576,929.90	Cash	$283,581,127.95
3,899,958.55	Property	11,353,387.99
103,586.11	Other securities, carrier's issue	701,375.00
23,364,449.28	Securities of other companies	7,819,428.26
86,955.27	Payment of interest.	
353,387.99	Bills receivable	150,000.00
4,730,364.28	In lieu of deferred maintenance on property sold.	
27,350.00	Other items.	
	Applied in reduction of note receivable	1,649,200.00
	Current liabilities of affiliated companies assumed in lieu of payment on due notes.	1,335,628.13
	Notes of The Consolidated Railway Company held at date of merger, assumed and canceled	1,120,000.00
43,570,000.00	Renewals	43,570,000.00
379,712,981.38	Total received at issue.	
1,715,437.50	Discount and commission.	
	Total given in retirement	351,280,147.33
	Gain in retirement of notes	9,271.55
	Outstanding	30,139,000.00
381,428,418.88	Total issued	381,428,418.88

The item "in lieu of deferred maintenance on property sold $4,730,364.28" relates to urban and interurban electric railways and other public utilities. These properties were sold; the trolley lines to The Connecticut Company and the other property to the Housatonic Power Company. An estimate was made of the money necessary to rehabilitate the properties and the carrier gave its demand notes to The Connecticut Company for $4,227,586.66 and to the Housatonic Power Company for $502,777.62. The item called "property, $11,353,387.99," represents steamships, and other property used in their operation sold to the New England Navigation Company. The item "Current liabilities of affiliated companies assumed in lieu of payment on due

notes" represents debts of the Housatonic Power Company and The Connecticut Company satisfied by the carrier. The notes outstanding on date of valuation, comprised the following:

Held by various banks	$3,127,000
$50,000 at 3½ per cent.	
300,000 at 3¾ per cent.	
275,000 at 4 per cent.	
222,000 at 4½ per cent.	
1,280,000 at 5 per cent.	
1,000,000 at 5½ per cent.	
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Held by sundry persons unknown	$12,000
$7,000 at 6 per cent.	
5,000 at 5 per cent.	
One-year 5 per cent collateral notes, dated May 1, 1915	27,000,000
Total	30,139,000

Of the $30,139,000 outstanding on date of valuation, $27,000,000 represented 1-year 5 per cent collateral notes dated May 1, 1915, $3,127,000 were notes held by various banks, and 512,000 were notes held by sundry persons unknown.

Nonnegotiable debt to affiliated companies.—The nonnegotiable debt to affiliated companies at date of valuation, was $807,536.58 made of the following:

Hartford and New York Transportation Company	$175,000.00
(Demand note dated Nov. 20, 1918, for money borrowed.)	
The Connecticut Company	474,803.98
(Advances for electrical construction.)	
Boston and Providence Railroad Corporation	144,183.16
(Amounts due for sale of land belonging to Boston and Providence Railroad Corporation.)	
Providence, Warren and Bristol Railroad Company	13,549.44
(Advances for electrical construction.)	
Total	807,536.58

Contingent liabilities.—The carrier has guaranteed the payment of principal and interest on bonds and dividends on stock of other companies. The extent of these liabilities, the maximum annual payment that may be required, the actual payment made in the year ended on date of valuation, under the several guarantees and the circumstances upon which the liabilities are contingent are described below.

Name of issuing company and description of the securities guaranteed.	Total principal amount.	Maximum annual payment.	Actual payment made by carrier for year ended date of valuation.
Boston Railroad Holding Company, 4 per cent cumulative preferred stock	$27,293,900	$1,091,756	$131,571.50
The Boston Terminal Company, first-mortgage 3½ per cent bonds, due Feb. 1, 1947	14,500,000	507,500	None.
Central New England Railway Company, first-mortgage 4 per cent 50-year bonds, dated Jan. 1, 1911	14,644,000	585,760	None.
New England Investment and Security Company, 4 per cent preferred stock	4,000,000	160,000	None.
15-year 5 per cent funding notes, due 1924	5,000,000	200,000	None.
New England Navigation Company, 50-year 4 per cent debentures, due Nov. 13, 1955	3,600,000	144,000	None.
New York and Stamford Railway Company, first and refunding 4 per cent bonds, due Nov. 1, 1958	925,000	37,000	None.
The New York Connecting Railroad Company, first mortgage 4½ per cent bonds, due Aug. 1, 1953	16,000,000	720,000	None.
New York, Westchester and Boston Railroad Company, first-mortgage 4½ per cent bonds, due July 1, 1946	21,390,000	962,550	864,000.00
Springfield Railway Companies, 4 per cent preferred stock	3,387,900	135,516	None.
Total	110,740,800	4,544,082	995,571.50

170 The circumstances upon which the above liabilities are contingent are given in the following paragraphs:

Boston Railroad Holding Company 4 per cent cumulative dividends upon the preferred stock and interest on all its indebtedness is guaranteed under authority of law in Massachusetts by the carrier together with the payment of the principal thereof at 100 per cent upon liquidation. On date of valuation the carrier held 244,939 shares of the preferred stock and 28,000 shares were in the hands of the public. There was no other debt outstanding except that owed to the carrier for advances. The Boston Railroad Holding Company has no productive assets except its holdings of Boston and Maine Railroad securities, as follows:

	Par value	Book value
Common stock	$21,918,900	$27,927,451.68
Preferred stock	654,300	1,060,145.00
Bonds	1,000	922.50
	22,574,200	28,988,519.18

If the Boston and Maine Railroad fails to pay dividends sufficient to meet the Boston Railroad Holding Company's obligations the carrier makes up the deficiency. The carrier has received from this source in about three and one-half years $1,295,430.13 and has paid out $922,581.67, a net return for the period named *deficiency. The carrier has received from this source in about 3½ years $1,295,430.13 and has paid out $922,581.67, a net return for the period named* of $372,848.46. The carrier's total investment in the Boston Railroad Holding Company is $27,600,400, being $24,493,900 in preferred and $3,106,500 in common stock. Accounts representing advances to the Boston Railroad Holding Company were reduced from $2,336,215.67 to a nominal balance of $2, as the prospect of collection is poor.

The Boston Terminal Company owns the passenger terminal in Boston called the South Station and its debt is guaranteed, both principal and interest, by the interested companies, which are the carrier, the Old Colony Railroad Company, the Boston and Providence Railroad Company, and the Boston and Albany Railroad Company (or its lessee, The New York Central Railroad Company. As the carrier is the lessee of the Old Colony Railroad Company and the Boston and Providence Railroad Company is the successor to The New England Railroad Company, it holds a four-fifths interest and the Boston and Albany Railroad Company (or its lessee) one-fifth. The rents paid by the interested companies as tenants of the station are adjusted to provide for the Boston Terminal Company's obligations and there is nothing to pay directly under this guarantee.

Central New England Railway Company first-mortgage 4 per cent bonds had guarantee authorized by the carrier for principal and interest, to the total par value of $14,644,000. On date of valuation there had been actually issued to the carrier $13,427,000 of these bonds, of which it had sold $11,927,000 and pledged as part collateral to its one year notes $1,500,000, with its guarantee. The Central New England Railway Company held in its treasury, as nominally but not actually issued, $1,217,000 of this issue. No payment has been required under the guarantee, as the Central New England Railway Company has regularly earned and paid its fixed charges.

New England Investment and Security Company guarantee of the Consolidated Railway Company was assumed by

the carrier as its successor. On June 25, 1906, the Consolidated Railway Company guaranteed the payment
171 of 4 per cent cumulative dividends on $4,000,000 of preferred stock of the New England Investment and Security Company and the payment of 105 per cent of the principal upon liquidation. The carrier has advanced $277,968 for the payment of dividends under this guarantee and received 15-year 5 per cent funding notes in repayment thereof. Fifteen-year 5 per cent funding notes to the amount of $16,250,000 were issued April 1, 1909, under the carrier's guarantee as to principal and interest. Of the total so issued and guaranteed, $2,541,000 have been retired, leaving $13,709,000 outstanding on date of valuation, all being held by the New England Navigation Company and all of the stock of the latter is held by the carrier. The carrier reports its guarantee as applicable to only $5,000,000 of the notes outstanding.

The New England Navigation Company on November 13, 1905, purchased from the Old Colony Railroad for $3,600,000 par value of 50-year 4 per cent debentures, $1,200,000 par value of the stock of the Old Colony Steamboat Company. The carrier guarantees the principal and interest of the debentures given for the stock in the event of the cancellation of the lease of the Old Colony Railroad to the carrier. The stock, par value $1,200,000, acquired — the exchange for $3,600,000 par of debentures, stood on the books of the Old Colony Railroad at $1,277,500.

The New York and Stamford Railway Company's entire issue of capital stock was purchased by The Consolidated Railway Company in December, 1904. The New York and Stamford Railway Company owns a trolley line in Westchester County, N. Y. The carrier succeeded to The Consolidated Railway Company's interest. The two companies made advances to the New York and Stamford Railway Company and received in part payment therefor the latter's first and refunding mortgage 4 per cent bonds, due November 1, 1958, of the par value of $925,000. In the purchase at foreclosure, in 1909, of the property of the Tarrytown, White Plains and Mamaroneck Railroad Company, a trolley road, $247,000 par value of these bonds were given in part payment after being guaranteed as to principal and interest by the carrier. The remainder of the issue, $678,000, is held by the carrier.

First-mortgage 40-year 4½ per cent bonds of The New York Connecting Railroad Company, dated August 1, 1913, to the amount of $16,000,000, have been jointly guaranteed as to principal and interest by the carrier and the Pennsylvania Railroad Company, who own one-half each, the entire issue of The New York Connecting Railroad Company's capital stock. On date of valuation the road of the issuing company was under construction, and interest on the bonds was paid out of funds supplied for construction purposes and charged as a part of the investment.

New York, Westchester and Boston Railroad Company first-mortgage 4½ per cent bonds, due in 1946, are guaranteed principal and interest by the carrier. The total issue is $21,390,000, of which the carrier holds $2,190,000; the remainder, $19,200,000, is publicly held. The carrier owns 98.4 per cent of the stock; its whole investment is $16,675,477.76, as follows:

	Par value.	Book value.
Capital stock	$4,924,937.50	$6,241,951.76
First-mortgage bonds	2,190,000.00	2,190,000.00
Notes	5,478,751.00	5,478,751.00
Advances	2,764,775.00	2,764,775.00
	15,358,463.50	16,675,477.76

172 The amount of advances has been written down to a nominal sum of $1, as the prospect of repayment is considered remote. The interest on these bonds to and including July, 1912, was paid out of the funds furnished for construction. The carrier has paid the interest since July, 1912, in the following amounts:

11 months to June 30, 1913	$777.750
Year to June 30, 1914	864,000
Year to June 30, 1915	864,000
Total	2,505,750

Springfield Railway Companies' preferred stock of par value $3,387,900 is guaranteed at 4 per cent dividend and retirement in liquidation at 105, by the carrier. The carrier has no direct investment in this corporation, but has an indirect interest through the New England Navigation Company's holdings of the securities of the New England Investment and Security Company.

New York and New England Railroad Company first-mortgage 4 per cent 50-year bonds, dated April 1, 1889, covering certain terminal property in Boston, are included

by the carrier as a contingent liability. It pays annually thereon $60,000 interest. This is fully described under caption Funded Debt Liability in this chapter.

Result of Corporate Operations.

Income account.—The income account of the carrier for the year ended on date of valuation and for the period from October 1, 1872, to date of valuation, is stated as follows:

	Year.	Period.
Operating income:		
Railway operating revenues	$65,379,263.71	$1,199,268,710.35
Railway operating expenses	44,126,623.76	820,491,965.27
Net revenue from railway operations	21,252,639.95	378,776,745.08
Railway tax accruals	2,743,921.47	65,996,746.89
Uncollectible railway revenues	7,830.36	8,410.64
Railway operating income	18,500,888.12	312,771,587.55
Revenue from miscellaneous operations	49,877.30	13,073,294.42
Expenses of miscellaneous operations	43,322.59	5,812,998.82
Net revenue from miscellaneous operations	6,554.71	7,260,295.60
Taxes on miscellaneous operating property	5,361.37	5,361.37
Miscellaneous operating income	1,193.34	7,254,934.23
Total operating income	18,502,081.46	320,026,521.78
Nonoperating income	5,855,051.40	88,026,431.28
Gross income	24,357,132.86	408,052,953.06
Deductions from gross income	22,049,161.43	240,984,841.85
Net income	2,307,971.43	167,068,111.21
Disposition of net income:		
Income applied to sinking and other reserve funds		326,998.18
Dividend appropriation of income		169,707,612.00
Total appropriations		170,034,610.18
Income balance transferred to credit of profit and loss	2,307,971.43	
Income balance transferred to debit of profit and loss		2,966,498.97

Prior to 1909 the carrier charged as rent for leased roads a net amount which was less than the amount properly so chargeable by the sum of the carrier's income
173 from funded debt of the lessors which it held and the dividends upon the capital stock of those lessors which it was entitled to receive. The total of these counterbalancing omissions is $12,462,692.89. The detailed statement of the income account shows $149,555.58 as amortization of discount on funded debt. This amount represents

discount on short-term notes, $111,708.34, which should have been charged as interest on unfunded debt and $37,847.24, loss on sale of investment securities, which should have been carried direct to profit and loss.

The property of the Connecticut Railway and Lighting Company (a trolley line) which was leased to the Consolidated Railway Company and received by the carrier in the merger of 1907 was sublet to The Connecticut Company and the Housatonic Power Company on February 28, 1910. These sublessees pay the carrier the amount which the latter is obligated to pay under the direct lease. The carrier charges rent for leased roads with the rent paid and railway tax accruals with the taxes on the leased property. As it receives these amounts from the sublessees it credits both rent and taxes to its income as income from lease of road. These items seem to have no proper place in the carrier's income account. The carrier pays to the owner of the property the amounts it receives from the sublessees. The effect of this accounting in the year ended on date of valuation, was to overcharge railway tax accruals $232,446.66 and rent for leased roads $1,397,334.67 and to overcredit income from lease of road by the sum of these two amounts, or $1,629,781.33.

When the carrier acquired The Connecticut Company trolleys it assumed the funded debt of the several companies. This debt comprises 20 issues and on date of valuation amounted to $18,330,000. The annual interest was $771,200. The properties were sold free from debt. The carrier agreed with the purchasing companies to pay the annual interest, and the principal amounts at maturity. The debts come due in periods varying from 1 to 40 years from the date of this valuation. The interest item will gradually lessen as the debt falls due and is retired, but to provide for the payment of the principal amounts will put a further burden upon the carrier's income of approximately $458,250 a year. Thus the carrier has a debt in its balance sheet, secured by mortgages on real property, with no corresponding investment in physical property recorded; and a charge in the income account to interest on funded debt, with no corresponding revenue derived from the property pledged to secure that debt.

With the acquisition of the property of the New England Railroad Company, effective in the accounts at July 1, 1908,

the carrier assumed a mortgage debt of the New York and New England Railroad Company but did not formally record its liability therefor. The total of the debt is $1,500,000, the rate of interest 4 per cent, and the annual interest charge $60,000. This is paid by the carrier and charged as interest on unfunded debt.

The dividend of $2,356,768.50, paid in the fiscal year 1914, was charged to income. The net income available for dividends in that year was only $268,662.87 and it was reported to the stockholders as paid out of surplus.

The deferred payments for equipment purchased under equipment trusts A and AA were represented by certificates issued and the interest paid thereon was charged to income as hire of equipment. The total of interest so charged to date of valuation was $194,425. It should have been charged as interest on funded debt.

In 1906 income was charged $3,000,000 as an appropriation for investment in physical property, but no corresponding reserve was recorded. The amount is included in the income account under miscellaneous income charges.

174 The investment in miscellaneous physical property includes $487,397.04 as the investment in electrical roads. A part of that investment, $191,595.44, represents about 5.6 miles of electrical railroad owned by the carrier and leased to the New York and Stamford Railway Company. The annual rent therefor is included in the carrier's income account as income from lease of road, whereas it should be in the account for miscellaneous nonoperating physical property.

Profit and loss account.—The profit and loss account for the period from October 1, 1872, to date of valuation, as shown by records of the carrier, is as follows:

Credits.

Delaved income credits:	
Expenditures for additions and betterments on leased roads charged to operating expenses and transferred to profit and loss by charges to the lessors—	
Harlem River and Port Chester	$1,302,475.84
Old Colony Railroad	18,891.71
The New England Railroad Company	1,237,202.90
The Naugatuck Railroad Company	134,621.06
The Danbury and Norwalk Railroad Company	52,158.94
New Haven and Derby Railroad Company	6,773.88
New Haven and Northampton Company (of 1862)	135,060.57
Boston and New York Air Line Railroad Company	352,519.76
The Providence Terminal Company	1,610.54

Adjustment of income accounts—		
Revenues from miscellaneous operations		28,848.86
Hire of freight cars		266.00
Miscellaneous rent income		103,065.40
Separately operated properties, profit		20,108.08
Dividend income		15,157.66
Income from funded securities		442,822.51
Income from unfunded securities and accounts		850,651.51
Income from sinking and other reserve funds		55,500.72
Miscellaneous income		67,018.33
Railway operating expenses		130,942.09
Railway tax accruals		153,526.06
Rent for leased roads		4,181.66
Interest on funded debt		3,576.83
Interest on unfunded debt		13,504.03
Miscellaneous income charges		19,560.00
Total		5,150,044.94
Unrefundable overcharges		18,665.27
Miscellaneous credits:		
Premium on issue of carrier's capital stock		17,205,164.63
Premium on issue of carrier's funded debt		977,641.36
Profit on resale of carrier's capital stock		6,611,152.28
Profit on resale of carrier's funded debt		51,551.56
Profit on sale of investment securities including increase in book values on account of exchange of carrier stock for stock of other companies owning property acquired		3,907,580.04
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Par value of bond not presented for redemption		$1,000.00
Balances transferred from other companies—		
Hartford and New Haven Railroad Company	$1,387,641.40	
New York and New Haven Railroad Company	1,043,971.28	
Connecticut Valley Railroad Company	3,776.80	
Various street railways	523,686.71	
Village Water Company	2,230.75	
South Bay Wharf and Terminal Company	354.23	
		2,961,661.17
Excess of assets received over liabilities assumed in connection with the lease of sundry roads—		
New York, Providence and Boston Railroad Company	$1,157,081.97	
The Hartford and Connecticut Valley Railroad Company	95,847.07	
	1,252,929.04	
Less amount due The Naugatuck Railroad Company	1,226,600.31	
		26,328.73
The New England Railroad Company		888,406.07
Excess of assets received over cost of roads—		
Purchase or merged—		
Shore Line Railway, difference in capital stock	250,000.00	
Less profit and loss balance	29,983.81	
		220,016.19
Housatonic Railroad Company		3,602,263.38
Shepaug Litchfield and Northern Railroad Company		112,742.29

Received from New England Navigation Company for account of New Haven Steamboat Company		17,889.65
Received in settlement of claims from contractors		5,031.24
Reserve funds discontinued, assets returned to treasury and liability canceled—		
Insurance fund		1,953,883.93
Coal fund		29,470.74
Received from city of New Haven in sale of the property of the toll bridge		25,000.00
Received at the dissolution of the Eastern Railway Association		7,038.59
Minor items, 37 in number, each less than $5,000		17,566.63
Total		38,621,388.48
Grand total		43,790,098.69

175a *Debits*

Debit balance transferred from income:		
Debit balances	$13,393,181.98	
Credit balances	10,426,683.01	$2,966,498.97
Surplus applied to sinking and other reserve funds:		
Reserve for freight claims		86,611.91
Debt discount extinguished through surplus:		
Discount on issue of carrier's funded debt		3,419,538.17
Loss on retired road and equipment:		
Float No. 20 lost by sinking		11,386.99
Third rail, Hartford to New Britain, abandoned—		
Original cost	$59,969.95	
Less salvage	19,249.88	40,720.07
Grain elevator, South Boston, abandoned		249,505.00
Cost of demolishing grain elevator at South Boston		7,086.68
Tracks at New Hartford, abandoned		1,839.86
Interlocking signals removed		15,787.00
Depreciation prior to July 1, 1913, on equipment retired in year 1914		130,070.61
Bridge and pontoons at Fishkill Landing, abandoned		21,250.00
Round House at Stonington, Conn., abandoned		14,000.00
Sundry sidetracks removed		93,764.60
Sundry structures abandoned and not replaced		56,163.16
Total		641,573.97
Delayed income debits:		
Adjustment of income accounts—		
Railway operating revenues		58,181.96
Separately operated properties, profit		299,231.92
Income from funded securities		3,711.66
Income from unfunded securities and accounts		107,334.87
Railway operating expenses		336,195.88
Railway tax accruals		538,973.90
Uncollectible railway revenue		24,519.72
Hire of freight cars		160,892.34
Joint-facility rents		110,995.09
Rent for leased roads		1,333.34
Miscellaneous rents		4,470.32

Interest on funded debt		2,051.56
Interest on unfunded debt		2,895.92
Miscellaneous income charges		209,161.95
Total		1,859,950.43
Miscellaneous debits:		
Loss on resale of carrier's capital stock		134,650.98
Reduction of book value of carrier's stock reacquired		177,480.90
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Reduction of book value of carrier's funded debt reacquired		$181,005.67
Loss in retirement of funded debt assumed		36,338.50
Discount on carrier's equipment-trust certificates sold		69,200.00
Loss on sale of investment securities		2,719,750.63
Reduction of book value of investment securities		4,369,560.96
Book account due the Hartford and New Haven Railroad Company by the New York and New Haven Railroad Company at date of consolidation		403,230.37
Extra dividend $10.33 per share on 63,000 shares Hartford and New Haven Railroad Company stock paid under terms of consolidation		650,790.00
Bonds of Hartford and New Haven Railroad Company outstanding, but not of record at date of consolidation, charged here when paid		37,000.00
Retirement and cancellation of first-mortgage bonds of The Naugatuck Railroad Company		1,300,000.00
Part of expenditures for equipment, 1904, charged here in lieu of depreciation		7,326,781.10
Part of expenditures for improvements at Bridgeport, Conn., 1904		970,241.27
Loss in exchange of convertible debenture certificates for carrier's stock		126,605.91
Part of expenditures for improvements, 1906—		
Road	$1,865,819.82	
Equipment	3,711,731.43	
		5,577,551.25
Part of expenditures for road improvements, 1907		3,000,000.00
Part of expenditures for equipment, 1908		1,579,263.99
Investment in the Ridgefield and New York Railroad Company incomplete and abandoned—		
Cost of stock	$39,004.98	
Other expenditures	2,950.00	
		41,954.98
Advances to the Boston and Providence Railroad Company charged off		53,041.67
Adjustment of expenditures on New Haven and Northampton Company (of 1862)		23,641.03
Adjustment of rail and tie renewal accounts		382,660,77
Net amount current assets and liabilities taken over under sundry leases		121,316.69
Excess cost of stock of The Hartford and Connecticut Valley Railroad Company over the value assigned to the property received		90,602.93
Current liabilities of The Hartford and Connecticut Valley Railroad Company assumed		96,647.07
Book value of obsolete material, less salvage		118,392.77
Paid The Rhode Island Company for cancellation of contract		120,000.00
Discount on The Consolidated Railway Company's funded debt transferred		650,357.52

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Reduction in cost of U. S. Transportation Company purchased by The Hartford and New York Transportation Company	$263,673.31
Adjustment of cost of Boston Wharf Company property	48,142.50
Minor items, 33 in number, each less than $5,000	30,455.25
Uncollectible accounts and other miscellaneous debits	382,552.93
Total	31,082,890.95
Grand total	40,057,064.40
Credit balance on date of valuation	3,733,034.29
Total	43,790,098.69

The profit and loss account shows delayed income credits of $5,150,044.94 and delayed income debits $1,859,950.43, resulting in net delayed income credits of $3,290,094.51. It also shows premium on capital stock of $17,205,164.63 as a miscellaneous credit, which is not according to present classification.

The sum of the credit balance taken over from the Hartford and New Haven Railroad Company, $1,387,641.40, and from the New York and New Haven Railroad Company, $1,043,971.28, amounted to $2,431,612.68. From this amount were deducted two items in miscellaneous debits, book account due the Hartford and New Haven Railroad Company by the New York and New Haven Railroad Company on date of consolidation, $403,230.37, and extra dividend of $10.33 per share on 63,000 shares Hartford and New Haven Railroad Company stock paid under terms of consolidation $650,790, amounting together to $1,054,020.37, leaving as a balance $1,377,592.31 which shows as the profit and loss net balance charged in the consolidation.

Investment in Road and Equipment.

The investment in road and equipment, including land, on date of valuation is stated in the books of the carrier to be $195,505,843.72, of which $134,024,062.55 is stated to represent the investment in road and $61,481,781.17 the investment in equipment. The total is made up as follows:

Property acquired.	Restated investment account.	Other items debit.	Other items credit.	Total as stated on books of the carrier.
Hartford and New Haven Railroad Company	$5,675,955.18			$5,675,955.18
New York and New Haven Railroad Company	9,326,490.79			9,326,490.79
The Stamford and New Canaan Railroad Company	99,877.46			99,877.46
The Hartford and Connecticut Valley Railroad Company	896,647.07			896,647.07
New York, Providence and Boston Railroad Company	6,889,193.04			6,889,193.04
The Contractors to Rebuild and Support Union Wharf and Pier in New Haven	177,600.00			177,600.00
The Company for Erecting and Supporting a Toll Bridge from New Haven to East Haven		$6,688.67		6,688.67
Shore Line Railway	1,165,419.47	4,076.63		1,169,496.10
Housatonic Railroad Company	3,199,717.56	3,531,990.23		6,731,707.79
Shepaug, Litchfield and Northern Railroad Company	317,000.57	332,039.48		649,040.05
The Danbury and Norwalk Railroad Company	1,752,360.29		$3,479.60	1,748,880.69

Providence and Springfield Railroad Company	$1,277,165.38			$1,277,165.38
Woonsocket and Pascoag Railroad Company	200,000.00			200,000.00
New Haven and Derby Railroad Company	1,895,962.70		$75,888.25	1,820,074.45
The Middletown, Meriden and Waterbury Railroad Company	136,760.00		36,220.00	100,540.00
The Rockville Railroad Company	51,962.50			51,962.50
Rhode Island and Massachusetts Railroad Company (of R. I.)	189,299.50			189,299.50
Colchester Railroad Company	26,250.00			26,250.00
The Naugatuck Railroad Company	7,487,824.30		75,593.00	7,412,231.30
The Providence Terminal Company	2,632,249.13			2,632,249.13
Boston and New York Air Line Railroad Company	3,621,486.76		159,327.39	3,462,159.37
Pawtuxet Valley Railroad Company	360,935.74			360,935.74
The Manufacturers' Railroad Company	53,247.30			53,247.30
The New England Railroad Company	29,728,079.19		2,439,862.23	27,288,216.96
Newport and Wickford Railroad and Steamboat Company	47,139.94			47,139.94
New Haven and Northampton Company (of 1862)	4,019,914.52	$157,362.56		4,177,277.08
Rhode Island and Massachusetts Railroad Company (of Mass.)	191,700.00			191,700.00

Property acquired	Restated investment account.	Other items debit.	Other items credit.	Total as stated on books of the carrier.
Berkshire Railroad Company (of 1905)	2,488,756.34	.....	15,232.97	2,473,523.37
Milford, Franklin and Providence Railroad Company	59,716.47	50,283.53	.....	110,000.00
Milford and Woonsocket Railroad Company	133,253.07	75,346.93	.....	208,600.00
Roxbury Central Wharf Company	1,055,186.89	.....	6,736.36	1,048,450.53
South Bay Wharf and Terminal Company	1,989,741.35	.....	5,931.75	1,983,809.60
Total	87,146,892.51	4,157,788.03	2,818,271.55	88,486,408.99
Additions and betterments	106,272,409.35	747,025.38	.....	107,019,434.73
Total	193,419,301.86	4,904,813.41	2,818,271.55	195,505,843.72

The various items in the schedule are in the following paragraphs considered in detail, serially by properties.

The Hartford and New Haven Railroad Company and the New York and New Haven Railroad Company consolidation resulted in the issue of stock of the new company for stock of the old companies, share for share, and the assumption of all liabilities by the carrier, which took all of the assets. In addition to receiving stock of the new company the stockholders of the Hartford and New Haven Railroad Company received $10.33 in cash for each share held, the total being $650,790. It is a part of $1,377,572.31 in the statement following. The two sets of accounts were brought together as follows:

Debits:		
Hartford and New Haven Railroad Company's investment—		
Road	$4,803,758.18	
Equipment	872,197.00	
		$5,675,955.18
New York and New Haven Railroad Company's investment—		
Road	8,357,715.79	
Equipment	968,775.00	
		9,326,490.79
Capital stock of the Company for Erecting and Supporting a Toll Bridge from New Haven to East Haven		8,888.67
Capital stock of the Hartford and New Haven Railroad Company (treasury stock)		200,000.00
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Cash		$2,393,482.16
Other assets, net		1,214,275.51
Total		18,819,092.31
Credits:		
Capital stock—		
Hartford and New Haven Railroad Company	$6,500,000.00	
New York and New Haven Railroad Company	9,000,000.00	
		15,500,000.00
Funded debt unmatured—		
Hartford and New Haven Railroad Company	580,000.00	
New York and New Haven Railroad Company	1,361,500.00	
		1,941,500.00
Profit and loss balance		1,377,592.31
Total		18,819,092.31

The funded debt of the Hartford and New Haven Railroad Company assumed is here stated as $580,000. Bonds of the par value of $37,000 in addition were found to be outstanding and were paid off by the carrier. The total assumed was thus $617,000 but only the amount recorded as outstanding at the date of consolidation $580,000 was en-

tered as part of the cost of the property. When the remainder, $37,000, was recorded as a liability the charge was made to profit and loss. The New York and New Haven Railroad Company had outstanding a real-estate mortgage for $300,000. The property pledged was further mortgaged for $116,500 making the whole $416,500, and the total debt applicable to the property received from the New York and New Haven Railroad Company — $1,478,000, but only $1,361,500 was so charged.

The Stamford and New Canaan Railroad Company was a reorganization of the New Canaan Railroad Company which resulted upon default in payment of advances amounting to $99,877.46 made by the carrier. In the reorganization the carrier received stock of the Stamford and New Canaan Railroad Company to the amount of its claim. The property was taken under lease by the carrier and then merged. The stock was replaced by stock of the carrier of the par value of $100,000. The amount advanced by the carrier, $99,877.46, was charged as the cost of the property.

The Hartford and Connecticut Valley Railroad Company complete issue of stock, $800,000, was purchased by the carrier for $986,450. The road was leased and then merged. Certificates of indebtedness outstanding, $800, were assumed. The investment in stock was canceled and $896,647.07 was charged to the investment in road and equipment and $90,602.93 to profit and loss. If the latter amount is added to the account for investment in road and equipment, the recorded outlay in acquiring the property of the Hartford and Connecticut Valley Railroad would be shown as $987,250.

The New York, Providence and Boston Railroad Company was merged with the carrier after its property had been leased. Its accounts were transferred to the books of the carrier on the following basis:

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Debits:	
Investment in road and equipment (not separable)	$6,979,193.04
Improvements on leased property of the Pawtuxet Valley Railroad Company	16,313.53
Investments in stock of the Providence and Stonington Steamship Company	1,437,300.00
New York, Providence and Boston and Old Colony Railroad Terminal Company	37,500.00
Wood River Branch Railroad Company	20,000.00
The Narragansett Pier Railroad Company	18,700.00
Loans and bills receivable	150,000.00
Total	8,659,006.57

Credits:	
Capital stock	5,000,000.00
Funded debt unmatured	2,300,000.00
Loans and bills payable	1,200,000.00
Other assets and liabilities, net	159,006.57
Total	8,659,006.57

The carrier expended $3,000 cash in connection with the merger, which was charged to its profit and loss account. The carrier subsequently sold the Warwick branch for $90,000, making the net cost of property acquired from the New York, Providence and Boston Railroad Company recorded at $6,889,193.04.

The Contractors to Rebuild and Support Union Wharf and Pier in New Haven entire issue of stock was acquired by the carrier for $190,000, and there was received, in addition to the physical property, 75 shares of the stock of the Providence and Worcester Railroad Company and 10 shares of Boston and New York Air Line Railroad Company, which were sold for $12,400 and the remainder, $177,600, was included in the carrier's account for investment in road and equipment.

The Company for Erecting and Supporting a Toll Bridge from New Haven to East Haven complete issue of stock was acquired by the carrier from the Hartford and New Haven Railroad Company at a book value of $8,888.67. This stock represented the ownership of the bridge and 22 shares of the capital stock of The Chicago, Rock Island and Pacific Railroad Company. The carrier sold the bridge to the city of New Haven in 1886 for $25,000 in cash, and credited that amount to profit and loss. In October, 1895, the bridge company was merged with the carrier and the book value of the stock, $8,888.67, was divided, $2,200 to an account representing The Chicago, Rock Island and Pacific Railroad Company stock and $6,688.67 to the account for investment in road and equipment. As all of the property of the bridge company, except the Chicago, Rock Island and Pacific Railroad Company stock, had been sold, no charge should have been made to the account for investment in road and equipment; but the amount so charged should have been written off to profit and loss against the amount credited therein as received for the bridge.

The Shore Line Railway property came to the carrier in the consolidation of 1872 under a lease to the New York and New Haven Railroad Company. Upon the merger of the

property the carrier assumed the Shore Line Railway's debt and replaced the Shore Line Railway stock of the par value of $1,000,000 with carrier stock of the par value of $750,000. The charges to the accounts for investment in road and equipment were as follows:

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Funded debt of the Shore Line Railway assumed		$200,000.00
Par value of carrier stock issued in direct exchange for Shore Line Railway stock of the par value of $806,800, or at 75		605,100.00
Cash paid in acquisition of Shore Line Railway stock		218,869.06
Book value of securities given for 1,932 shares of Shore Line Railway stock		141,970.50
Total considerations of purchase		1,165,939.56
Cash received with railroad property		520.09
Investment in road and equipment		1,165,419.47
Premium (credited by carrier to profit and loss) of conversion of $1,000,000 of Shore Line Railway stock at 75	$250,000.00	
Excess of cost over par of 1,449 shares of carrier stock used in exchange and charged to investment in carrier's own stock	215,939.56	
	34,060.44	
Less deficit from operation of the Shore Line Railway charged by the carrier to profit and loss	29,983.81	4,076.63
Actual charge of carrier to its account for investment in road and equipment		1,169,496.10

The Housatonic Railroad Company was acquired with the attendant accounting as follows:

Funded debt assumed by the carrier		$3,000,000.00
Housatonic Railroad Company complete issue of capital stock, par value $2,891,200, purchased for cash		112,873.15
Purchased for book value of carrier stock given in exchange		318,800.00
Total considerations of purchase		3,431,673.15
Received with railroad property claim against The Danbury and Norwalk Railroad Company for advances from the Housatonic Railroad Company	$231,855.59	
A one-twelfth interest in the Iron Works Aqueduct and Water Company	100.00	231,955.59
Investment in road and equipment		3,199,717.56
Excess book value of property over cost of acquisition	3,602,263.38	
Less adjustment of carrier stock used in acquisition	70,273.15	3,531,990.23
Recorded investment in road and equipment		6,731,707.79

181 This recorded investment was segregated as follows:

Road	$4,549,893.46
Real estate (used for transportation purposes)	421,796.86
Other property	178,481.32
Equipment	1,581,536.15
Total	6,731,707.79

In addition to the debt assumed, $3,000,000, the carrier also assumed the Housatonic Railroad Company's debt to the amount of $429,000 when the property was leased. This, with the net current assets and liabilities taken over at the date of the lease of 1892, was charged to profit and loss.

The Shepaug, Litchfield and Northern Railroad Company was acquired with investment detailed as follows:

Cash for complete issue $600,000 par value of Shepaug, Litchfield and Northern Railroad Company stock		$380,702.81
Received with railroad property:		
Carrier stock $20,000 par value	$37,000.00	
Current assets, net	26,702.24	
		63,702.24
Investment in road and equipment		317,000.57
Excess book value of property over cost of acquisition	219,297.19	
Profit and loss balance transferred	112,742.29	
		332,039.48
Recorded investment in road and equipment		649,040.05

The Danbury and Norwalk Railroad Company was purchased for an agreed price of $750,000 and the assumption of the funded debt, $1,000,000. The investment was accounted as follows:

Funded debt assumed	$1,000,000.00
Distributive share of the agreed purchase price on 19.5 shares of Danbury and Norwalk Railroad Company stock not acquired, at $62.50 for each share, less $31.25, the amount due on one-half shares not turned in	1,187.50
Cash advanced by the carrier for *traditions* and betterments	285,376.83
Cash paid for 2,960½ shares of Danbury and Norwalk Railroad Company stock of the par value of $248,025	236,816.36
Par value of carrier stock issued in exchange for 8,928 shares of the Danbury and Norwalk Railroad Company stock, par value $446,400	223,200.00
Book value of 23 shares of carrier stock given in acquisition of 92 shares of Danbury and Norwalk Railroad Company stock of the par value of $4,600	5,779.60
Investment in road and equipment	1,752,360.29
From the total of these considerations there was deducted the excess over par of the book value of 23 shares of carrier stock used in the acquisition of 92 shares of the Danbury and Norwalk Railroad Company which was charged to the carrier's investment in its own stock and the Danbury and Norwalk Railroad Company stock acquired was converted into 23 shares of carrier stock	3,479.60
Recorded investment in road and equipment	1,748,880.69

182 The Providence and Springfield Railroad Company was acquired through the acquisition by the carrier of 5,070½ shares of its stock out of a total of 5,174½ shares outstanding. The property was purchased for an agreed price of $569,195 and the assumption of the funded debt, $750,000, a total of $1,319,195. In recording the cost, the carrier made charges as follows:

For the funded debt assumed		$750,000.00
Distributive value of 104 shares not held paid in cash		11,440.00
Cash paid for 5,070½ shares	$513,213.72	
Less accrued dividend	30.22	
		513,183.50
Cash paid to quiet claims of stockholders		2,571.00
Total considerations of purchase		1,277,194.50
Cash received with railroad property		28.12
Recorded investment in road and equipment		1,277,165.38

The Woonsocket and Pascoag Railroad Company was purchased for—

Funded debt assumed by the carrier	$100,000.00
Book investment of carrier in Woonsocket and Pascoag Railroad Company stock	100,000.00
Recorded investment in road and equipment	200,000.00

The stock was the entire issue of the par value of $200,000, which was acquired from The New England Railroad Company upon the purchase of that company's property.

The New Haven and Derby Railroad Company was purchased for an agreed price of $2,044,370, which included the total funded debt of $1,280,000 to be assumed by the purchaser. The total net charge for the property was $1,820,074.45, made up of the following:

Funded debt assumed at par		$1,280,000.00
Distributive share of agreed purchase price due on two shares of stock not held		342.00
Cost of 4,468 shares of stock:		
Cash for 473 shares	$53,229.25	
Book value of 1,184 shares of carrier stock for 3,701 shares	129,980.00	
Book value of Boston and New York Air Line Railroad Company stock for 294 shares	31,219.00	
		214,428.25
Adjustment of rent through income		2.55
Cash expenditures for improvements to road while under lease		401,195.00
Investment in road and equipment		1,895,962.70
Deduction as amount added to book value of carrier stock held		75,888.25
Recorded investment in road and equipment		1,820,074.45

The total of the funded debt here shown as assumed is the amount outstanding at the date the carrier purchased the property. The bonds guaranteed by the city of New

Haven, $225,000, and the certificates of debt, $480,000, issued to reimburse the city of New Haven for interest paid on the guaranteed bonds, in all $705,000, were not entered by the carrier as funded debt assumed but were retired by the issue of carrier capital stock at par.

183 The Middletown, Meriden and Waterbury Railroad Company was purchased at an agreed price of $100,000. The carrier charged as its investment in road and equipment this agreed price, with the addition of a charge of $540, described as improvements to the property, making a total of $100,540. The carrier's actual investment was $136,220, the amount paid for the acquisition of the complete issue of the capital stock, together with the improvement charge of $540, aggregating $136,760.

The Rockville Railroad Company was acquired by the carrier through purchase of total issue of capital stock, $108,750 par value, for $35,062.50, and the liquidation of outstanding notes, $16,900, making the recorded investment in road and equipment $51,962.50.

The agreed purchase price for the property was $128,750, and this amount was entered as paid but concurrently the same amount was recorded as received for the stock, which, however, was not actually disposed of, but was canceled.

The Rhode Island and Massachusetts Railroad Company (of R. I.) was acquired through purchase by the carrier of its capital stock, par value $180,000, for $189,299.50. The agreement for the sale of the property fixed the price at $180,000, but the amount entered in the account for investment in road and equipment was the cost of the stock, $189,299.50.

The Colchester Railroad Company was acquired through the purchase by the carrier of all of the capital stock, $25,000 par value, for $1,250, and the assumption of the funded debt of $25,000 par value, aggregating a recorded investment in road and equipment of $26,250.

The Naugatuck Railroad Company was acquired at an agreed price of $10,516,574.59, made of $6,016,574.59 for distributions to the stockholders and the funded debt, $4,500,000. The investment accounting follows.

Funded debt assumed at par		$4,500,000.00
Cost of 15,743 out of 20,000 shares of The Naugatuck Railroad Company capital stock outstanding		2,789,549.63
Cash paid to holders of 4,257 shares, as their proportion of agreed purchase price		1,280,628.37
Total considerations of purchase		8,570,178.00
Less accrued dividends included in amounts charged to income	$16,977.63	
Less unexpended balance of proceeds of bonds issued by The Naugatuck Railroad Company for additions and betterments	1,065,376.07	1,082,353.70
Investment in road and equipment		7,487,824.30
Deduction as proportion of cost of stock charged to investment in carrier stock on account of exchange of 475 shares at par		75,593.00
Recorded investment in road and equipment		7,412,231.30

The Providence Terminal Company was acquired at a price fixed for all of the property of this company of $6,000,000, made up of $4,000,000 of funded debt outstanding and $2,000,000 for distribution to the stockholders at par. The carrier held all of the stock, so no money was actually paid out on account of the stock, although entries were made in the cash book to show the payment of $2,000,-

000 to apply on the purchase price and concurrently
184 the receipt of the same amount as due the carrier as holder of all of the stock. The account for investment in road and equipment was charged as follows:

Funded debt assumed		$4,000,000.00
Cost of $2,000,000 capital stock, received in repayments of advances and other accounts, at par		2,000,000.00
Net current liabilities assumed		62,690.77
Profit and loss balance taken over		3,650.01
Total charges		6,066,340.78
Less an unpaid balance due the Providence Terminal Company on account of its bonds delivered to the carrier in anticipation of the receipt of funds for new construction or additions and betterments		3,434,091.65
Recorded investment in road and equipment		2,632,249.13

The Boston and New York Air Line Railroad Company acquisition was on basis of an agreed purchase price of $7,317,946.84, made up the funded debt at par, $3,770,000, and $3,540,946.84 for distribution to the stockholders. The amount assigned to the road and equipment property acquired by the carrier was less, being composed of the items following:

Funded debt assumed			$3,777,000.00
Cash paid as the distributive share of the purchase price due holders of the stock not acquired by the carrier			828,743.82
Cost of stock acquired		$1,579,065.01	
Less portion sold for	$43,761.00		
Less book value of—			
Carrier stock increased by	159,327.39		
Less accrued dividends	1,159.29		
		204,247.68	
			1,374,817.33
Profit and loss balance taken over			183.28
Total charges			5,980,744.43
Less accrued dividends		9,444.00	
Less unpaid balance due the Air Line for its bonds delivered to the carrier in anticipation of the receipt of funds for additions and betterments		2,509,141.06	
			2,518,585.06
Recorded investment in road and equipment			3,462,159.37
The item of increase of book value of carrier stock in above accounting is not according to our present accounting			159,327.39
Investment in road and equipment			3,621,486.76

The Pawtuxet Valley Railroad Company was acquired by the assumption of its funded debt at par, $160,000, and the acquisition of all of its capital stock for $202,456. Current assets were acquired with the railroad property, amounting to $1,520.26, leaving as the recorded investment in road and equipment, $360,935.74.

The Manufacturers' Railroad Company was acquired on basis of price for the property of $60,000, but as the carrier was the owner of all of the stock entitled to share in the distribution, no money payment was actually made. The charge to the carrier's account for investment in
185 road and equipment was made of the cost of the capital stock of $51,030.65, and an unpaid debt due the carrier for cash advances of $2,216.65, aggregating $53,247.30.

The New England Railroad Company was acquired on basis of an agreed purchase price of all of the property of $45,000,000, comprising the funded debt at par, $17,500,000, and $27,500,000 for distribution to the stockholders; $20,000,000 common to receive par and $5,000,000 preferred to receive $150 for each share or $7,500,000. The charge to the carrier's account for investment in road and equipment, however, was made on a different basis, as follows:

Funded debt assumed at par	$17,500,000.00
Outside holdings distributive share	12,350.00
Cost of 49,999 shares The New England Railroad Company preferred	2,889,598.17
Cost of 199,878 shares The New England Railroad Company common	6,219,835.72
Unpaid balance due carrier for advances for additions and betterments	3,105,192.53
Current liabilities assumed, net	1,769.85
Total considerations of purchase	29,728,656.27
Less minor adjustments, dividends and other	577.08
Investment in road and equipment	29,728,079.19
Deduction as amount added to book value of carrier stock held in consequence of exchange for The New England Railroad Company stock	2,439,862.23
Recorded investment in road and equipment	27,288,216.96

The Newport and Wickford Railroad and Steamboat Company property was sold under foreclosure, the stated price being $60,000. The carrier took all of the railroad property, but did not take the steamboat which the company owned, and which was sold for $20,000. The charges to investment were as follows:

Cash paid for railroad property		$24,416.17
Current liabilities assumed, net		976.26
Unpaid balance due carrier for material and supplies and labor furnished		29,196.61
Total charges		54,589.04
Less cash returned by trustees	$6,000.00	
Cash from other sources	1,449.10	
		7,449.10
Investment in road and equipment		47,139.94

The New Haven and Northampton Company (of 1862) was acquired on basis of an agreed purchase price for all the property, of $4,084,000, which included the funded debt at par, $3,100,000, and $984,000 for distribution to the holders of 24,600 shares of stock. The carrier held all of the stock which stood in its books at $826,637.44. The charges to the account for investment in road and equipment were as follows:

Funded debt assumed	$3,100,000.00
Cash for 12,557 shares capital stock	325,110.44
Book value of 4,828 shares of carrier's stock exchanged for 11,967 shares of stock	493,442.00
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Book value of securities of other companies exchanged for 76 shares of stock	8,085.00
Carrier's outlay for additions and betterments	92,400.66
Carrier's outlay to sinking fund under lease	876.42
Investment in road and equipment	4,019,914.52

Par value 4,920 shares carrier stock	$492,000.00	
Cost of 12,300 shares of New Haven and Northampton Company (of 1862) stock in conversion—cash	297,585.86	
Excess credited to profit and loss	194,414.14	
Book value 565 shares of stock of New Haven and Northampton Company (of 1862)	59,651.58	
Par value of 226 shares of carrier stock given in conversion	22,600.00	
Excess added to carrier's investment in its own stock and credited to investment in road and equipment	37,051.58	
Debit items to investment		157,362.56
Recorded investment in road and equipment		4,177,277.08

The Rhode Island and Massachusetts Railroad Company (of Mass.) was acquired by payment of the carrier of $191,700 in cash for all of the capital stock of the company, 1,000 shares of the par value of $100,000, which amount was charged to its account for investment in road and equipment.

The Berkshire Railroad Company (1905) was acquired on basis of an agreed price for all of the property of $1,887,725, being $175 for each of 10,787 shares of capital stock. The charge to the carrier's account for investment in road and equipment was made of the following items:

Cost of 9,041 shares of Berkshire Railroad Company (1905) stock	$1,609,254.65
Book value of 143 shares held by the Berkshire Railroad Company (1905)	13,178.32
Liability of the Berkshire Railroad Company (1905) to the carrier for additions and betterments made under lease	598,976.69
Distributive share of purchase price due holders of 1,603 shares	280,525.00
Total charges	2,501,934.66
Less assets other than road and equipment received: 143 shares of stock held by the Berkshire Railroad Company (1905)	13,178.32
Investment in road and equipment	2,488,756.34
Deductions for excess of book cost of stock over the distributive share of purchase price	15,232.97
Recorded investment in road and equipment	2,473,523.37

The Milford, Franklin and Providence Railroad Company was acquired by the carrier for the following considerations:

Cash for $100,000 par value of capital stock, complete issue	$49,716.47
Funded debt assumed	10,000.00
Investment in road and equipment	59,716.47
Increase in book value credited to profit and loss	50,283.53
Recorded investment in road and equipment	110,000.00

187 The Milford and Woonsocket Railroad Company was acquired by the carrier for the following considerations:

Capital stock, par value $148,600, entire issue, purchased for cash	$73,253.07
Funded debt assumed at par	60,000.00
Investment in road and equipment	133,253.07
Increase in book value credited to profit and loss	75,346.93
Recorded investment in road and equipment	208,600.00

The Roxbury Central Wharf Company was acquired by the carrier for the folowing considerations:

Real-estate mortgage assumed	$290,000.00
Book value of 3,000 shares of capital stock of the Roxbury Central Wharf Company	756,000.00
Current liabilities assumed, net	9,193.89
Total charges	1,055,193.89
Less nominal value assigned to seven shares of stock retained	7.00
Investment in road and equipment	1,055,186.89
Profit and loss balance taken over	6,736.36
Recorded investment in road and equipment	1,048,450.53

The South Bay Wharf and Terminal Company was acquired by the carrier for the following considerations:

Real-estate mortgages assumed		$41,500.00
Book value of 14,810 shares South Bay Wharf and Terminal Company stock:		
Cash		292,463.11
Book value 4 per cent debentures		1,655,000.00
Interest due and other items		15,536.89
Total charges		2,004,500.00
Less—		
Nominal value assigned to nine shares of stock retained	$9.00	
Current assets received	13,283.39	
Proceeds of sale of a portion of land received	1,466.26	
		14,758.65
Investment in road and equipment		1,989,741.35
Profit and loss balance taken over		5,931.75
Recorded investment in road and equipment		1,983,809.60

Restated investment.—The "other items" are not in accordance with the present accounting classification. If they were eliminated from the investment in road and equipment account of the carrier and $4,160,134 added for equipment purchased but not recorded, and if the other adjustments herein described were made, the balance therein on date of valuation would be increased $2,164,195.07, to $197,670,038.79.

Recorded money outlay:		
Cash, net	$141,363,290.35	
Notes payable assumed	1,363,400.00	
Open account, balance due, canceled	3,105,192.53	
		145,831,882.88
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Capital stock issued		21,647,100.00
Funded debt assumed		43,994,300.00
Funded debt issued		4,160,134.00
Investment securities surrendered		2,832,046.96
From which must be deducted:		
Excess of assets over liabilities, other than road and equipment, received with roads acquired—		
Current assets received	$13,975,964.91	
Current liabilities assumed	2,699,679.93	
		11,276,284.98
Retirements and adjustments not specifically assignable to any class of outlay shown, net—		
Net items for road	1,568,193.94	
Net items for equipment	7,950,946.13	
		9,519,140.07

The carrier has stated that the outlays include $3,524,831.45 as the cost of certain lands classified herein as noncarrier lands. Of that amount, the chapter on original cost to date shows $3,478,196.82 (included in $7,288,002.53) and $1,460.96 as supported by accounting records, and $45,227.67 not so supported. The carrier also states that these outlays include $6,176,288.66 as the cost of lands classified herein as partly carrier and partly noncarrier. Of the latter amount there is shown in the chapter on original cost to date $6,141,556.08 as supported by the accounting records (composed of amounts $3,452,705.55 and $2,688,850.53) and $34,732.58 not so supported. The portion of the cost of the partly carrier and partly noncarrier lands, equitably assignable to the noncarrier uses of those lands, has not been determined. The retirements and adjustments are given in greater detail as follows:

Road:	
Estimated value of electric material abandoned	$109,601.65
Sundry structures and facilities abandoned	513,295.08
Estimated value of land not needed for transportation uses.	317,744.65
Mortgage assumed by purchase of property	300,000.00
Part of cost of new rails transferred to operating expenses	111,380.62
Part of cost of Bridgeport improvements transferred from profit and loss	970,241.27
Total credits	2,322,263.27

Recorded value of miscellaneous electric properties	$741,669.33	
Recorded value of securities in road account sold	12,400.00	
Total debits		754,069.33
Net credits		1,568,193.94
Equipment:		
Part of expenditures for equipment in 1904 transferred to profit and loss		7,326,781.10
Estimated value of equipment retired 1907–1915		8,660,045.57
Adjustment of book value of floating equipment		68,861.15
189		
Floating equipment retired and held for sale		139,756.00
Part of equipment expenditures, 1876, transferred to operating expenses		53,400.00
Part of book value of sleeping and parlor cars sold, transferred to operating expenses		188,724.91
Recorded expenditures for equipment transferred to "Equipment trust account" and classified as unadjusted debits		285,721.48
Total credits		16,723,290.21
Appraised value of equipment received from lessor companies		8,772,344.08
Net credits		7,950,946.13

Separation of equipment from road.—The division of the book account between road and equipment is not exact. At several dates the equipment then in use was appraised and entries, to bring the book account for equipment into agreement with the several appraisals, were made and the account for road changed in a like amount. The total added to the equipment account, and deducted from the account for road, by these inventory adjustments was $8,880,137.04. No attempt is made here to correct the book account for equipment, but there are features of it which affect that for road. The carrier received with the completed roads acquired some equipment which was recorded in its accounts as equipment and some which was not so recorded. The amounts to represent the equipment received, entered in its accounts as equipment, were as follows:

Received from—	
Hartford and New Haven Railroad Company	$872,197.00
New York and New Haven Railroad Company	968,775.00
Boston and New York Air Line Railroad Company	77,200.00
Manufacturers' Railroad Company	8,810.31
The New England Railroad Company	2,416,608.87
New Haven and Northampton Company (of 1862)	750,000.00
Total	5,093,591.18

The records of the following companies show that some equipment was conveyed to the carrier but the latter made

no separate entries to show the cost or value thereof. The recorded cost of the equipment delivered by these companies, or that reported to public authorities when no other record was available, at the time of the sale of the property was as shown.

Conveyed by—	
The Hartford and Connecticut Valley Railroad Company	$15,400.77
Housatonic Railroad Company	1,581,336.15
Shepaug, Litchfield and Northern Railroad Company	43,921.27
The Danbury and Norwalk Railroad Company	228,971.89
New Haven and Derby Railroad Company	200,675.92
The Rockville Railroad Company	25,857.99
The Naugatuck Railroad Company	309,997.37
Boston and New York Air Line Railroad Company	52,731.94
	2,458,893.30

The amount shown for the Boston and New York Air Line Railroad Company is the excess of its account for equipment over the amount recorded by the carrier.

190 There were other companies from which the carrier received equipment, as the New York, Providence and Boston Railroad Company, and the Providence and Springfield Railroad Company, but no separate amount was recorded to represent it. The result is that the account for road is overcharged by an amount which can not be determined, representing that part of the cost of equipment, not charged as equipment, which was received with the roads acquired and worn out or discarded before the appraisals were made. It is also overcharged, by the difference between the cost of equipment which was inventoried at less than that cost, and the appraised value. The carrier received from the owners of its leased roads equipment which was entered in its accounts at the appraised or agreed values. At the subsequent several appraisals no separation of the leased or owned equipment was made and the total adjustments of the book values, representing both owned and leased equipment, were made through the road account.

Expenditures charged to other accounts.—The carrier made expenditures purporting to be for road and equipment property which was not charged to the account representing such property but were charged to profit and loss and income as follows:

Year.	Road.	Equipment.	Total.
1904	$970,241.27	$7,326,781.10	$8,297,022.37
1906	1,865,819.82	3,711,731.43	5,577,551.25
1907	3,000,000.00	.....	3,000,000.00
1908	.....	1,579,263.99	1,579,263.99
Total	5,836,061.09	12,617,776.52	18,453,837.61

In 1907 the income account was charged $3,000,000 and that amount was credited to an improvement account against which current charges for road and equipment property were made. What part, if any, of these amounts represent renewals of property worn out, sold, or for any other cause withdrawn from transportation uses is not ascertainable. Prior to June 30, 1913, the carrier's charges for depreciation of equipment were not made as prescribed by us and these charges for equipment may have been in lieu of depreciation. On date of valuation, various addition and betterment projects were in progress and $599,310.04 had been charged therefor but these projects, being incomplete, were not in service and the cost was not included in the accounts for investment in road and equipment.

Equipment returned not included in road and equipment account.—The carrier includes in its return of equipment, hereinafter described and classified, 271 passenger-train cars at a total cost of $4,160,134. This amount is not included in its account for investment in road and equipment. These cars were acquired under a lease and conditional sale agreement, by which the manufacturer sold them to a vendor, which leased them, through a trustee, to the carrier. The lease provides certain payments to be made, which are called payments of rent, and that when all of these payments are made, but not before, they are to be considered payments of purchase money, and the cars become the property of the carrier. The trustee has issued trust certificates to represent the deferred payments.

Original Cost to Date.

The original cost to date of all common-carrier property owned by the carrier can not be ascertained from the records that are obtainable. Accounting records are inade-
191 quate on property representing a recorded road mileage of 262.39 miles, certain unverified information on which is given hereinafter. The recorded outlay for the remaining common-carrier property, representing a

recorded road mileage of 1,015.96 miles and additions and betterments covering the whole property, to date of valuation, is as follows:

Recorded money outlay (cash and notes)	$193,917,951.42
Outlay in securities	18,265,273.96
Outlay in other considerations	12,378,822.78
From which should be deducted retirements and adjustments	13,147,048.79

These outlays are shown in detail in the following table:

Outlay by—	Cash and notes.	Securities issued.	Other considerations.	Less retirements and adjustments.
The carrier	$115,686,549.42	$4,265,134.00	.....	$9,519,140.07
Hartford and New Haven Railroad Company	3,286,671.09	180,000.00	.....	.....
Hartford and Springfield Railroad Corporation	713,877.53	26,500.00	.....	.....
The Branch Company	86,997.57	.....	.....	.....
The Middletown Railroad Company	197,467.69	.....	.....	.....
Middletown Extension Railroad Company	27,682.66	.....	.....	.....
New Britain and Middletown Railroad Company	105,218.63	.....	.....	.....
Windsor Locks and Suffield Railroad Company	158,702.79	.....	.....	.....
New York and New Haven Railroad Company	7,323,551.99	736,500.00	.....	257,346.48
The Hartford and Connecticut Valley Railroad Company	220,935.19	.....	.....	124,288.12
Connecticut Valley Railroad Company (trustee)	50,395.24	.....	.....	.....
New York, Providence and Boston Railroad Company	.....	.....	$7,423,944.32	.....
Housatonic Railroad Company	4,752,410.73	381,232.24	.....	776,645.79
Shepaug, Litchfield and Northern Railroad Company	50,737.90	.....	.....	1,697.85
The Danbury and Norwalk Railroad Company	688,278.95	.....	1,362,715.10	16,374.50
Providence and Springfield Railroad Company	984,949.37	387,865.75	1,000.00	.....
New Haven and Derby Railroad Company	1,828,973.62	272,000.00	.....	.....
The Meriden, Waterbury and Connecticut River Railroad Company	489,367.59	.....	.....	2,056.59
The Meriden and Cromwell Railroad Company	299,909.72	.....	.....	.....
The Meriden and Waterbury Railroad Company	770,321.32	.....	.....	.....
The Rockville Railroad Company	165,808.46	2,900.00	.....	352.81
Rhode Island and Massachusetts Railroad Company (of R. I.)	138,834.86	11,000.00	.....	.....
The Naugatuck Railroad Company	4,455,353.94	1,168,132.27	.....	46,661.28
The Providence Terminal Company	2,632,620.71	.....	.....	.....
Boston and New York Air Line Railroad Company	1,546,621.33	.....	.....	91,363.40
Pawtuxet Valley Railroad Company	292,778.09	16,600.00	.....	.....
The Manufacturers' Railroad Company	52,838.77	.....	.....	.....
The New England Railroad Company	8,913,538.95	.....	385,000.00	1,502,920.13
The New York and New England Railroad Company	12,505,959.23	3,787,831.76	71,223.82	290,641.93
Springfield and New London Railroad Company	186,981.57	.....	.....	.....
The Hartford, Providence and Fishkill Railroad Company	4,105,651.55	141,074.87	.....	.....

Boston, Hartford and Erie Railroad Company	$8,802,395.75	$3,552,184.61	.....	.....
Southern Midland Railroad Company	519,272.74	462,666.40	.....	.....
Boston and New York Central Railroad Company	1,305,040.33	.....	$1,822.43	$40,800.00
Southbridge and Blackstone Railroad Company	572,200.00	100,000.00	130,413.22	.....
Norfolk County Railroad Company	1,212,395.41	177,292.79	.....	63,948.02
The New York and Boston Railroad Company	244,370.70	517,958.49	289,275.65	35,424.81
Charles River Railroad Company	66,575.21	23,857.60	.....	.....
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Charles River Branch Railroad Company	203,396.02	30,600.00	.....	.....
Newport and Wickford Railroad and Steamboat Company	131,029.28	.....	.....	517.29
New Haven and Northampton Company (of 1862)	5,952,510.30	.....	.....	222,717.23
New Haven and Northampton Company (of 1836)	645,597.59	500,000.00	.....	130,470.16
Hampshire and Hampden Railroad Corporation	443,923.84	103,243.18	.....	.....
Farmington Valley Railroad Company	44,620.08	.....	.....	.....
Rhode Island and Massachusetts Railroad Company (of Mass.)	71,921.13	40,400.00	.....	.....
Berkshire Railroad Company (1837)	.....	600,000.00	.....	10,111.32
Berkshire Railroad Company (1905)	263,453.12	.....	.....	.....
West Stockbridge Railroad Corporation	.....	39,600.00	.....	.....
Stockbridge and Pittsfield Railroad Company	429,706.57	448,700.00	.....	.....
Milford, Franklin and Providence Railroad Company	101,308.23	.....	.....	.....
Milford and Woonsocket Railroad Company	146,748.66	2,000.00	.....	13,561.01
Roxbury Central Wharf Company	.....	290,000.00	765,186.89	.....
South Bay Wharf and Terminal Company	41,500.00	.....	1,948,241.35	.....
Total	193,917,951.42	18,265,273.96	12,378,822.78	13,147,048.79

The carrier has stated that these outlays include $3,524,831.45 as the cost of certain lands classified herein as noncarrier lands. Of that amount, the section of this chapter devoted to cost of lands shows $3,478,196.82 (included in $7,288,002.53) and $1,460.96 as supported by accounting records and $45,227.67 not so supported. The carrier also states that those outlays include $6,176,288.66 as the cost of lands classified herein as partly carrier and partly noncarrier. Of the latter amount there is shown in the section of this chapter devoted to cost of lands, $6,141,556.08 as supported by the accounting records (composed of $3,452,705.55 and $2,688,850.53) and $34,732.58 not so supported. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

Attention is called to certain matters as follows with reference to some of the above items:

The outlay by the Danbury and Norwalk Railroad Company may include certain equipment, as The Danbury and Norwalk Railroad Company was operated from 1852 to 1856, by its owners. The amount representing such equipment can not be found from the records.

The Providence and Springfield Railroad Company owned about 7 miles of road for which there is no cost in detail. The New York and New England Railroad Company as its lessee, built such piece for which it recorded the cost as $285,737.28. This property was operated by its owners for about 17 years. The cost of the equipment is not shown separately.

The Meriden and Waterbury Railroad Company outlay includes outlay for about 6 miles which was abandoned. The outlay attaching to this 6 miles could not be segregated and no deduction was made in the accounts to represent it.

The Boston and New York Air Line Railroad Company outlay includes $831,904.16 expenditures for additions and betterments by the carrier, as lessee, which sum is not recorded in the lessor's books.

The New York and New England Railroad Company outlay includes purchase price of about 2 miles of road purchased from the Boston and Albany Railroad Company, but there is no amount set out separately to represent it.

193 The New England Railroad Company sold to the Boston and Albany Railroad Company about 5.3 miles of road for $409,118.33, but only $236,859.27 was deducted from the investment account.

The Roxbury Central Wharf Company property was acquired at outlay shown, as cost to the carrier.

The South Bay Wharf and Terminal Company property was acquired at outlay shown, as cost to the carrier.

Unverified information, bearing on certain properties acquired, aggregating 253.89 miles of road is given as follows:

Company.		Road mileage.	Reported or stated cost not verified.
New Canaan Railroad Company	Cost, not verified, reported to public authorities by The Stamford and New Canaan Railroad Company; road, $230,746.03 and equipment, $27,197.90.	8.30	$257,943.93
Connecticut Valley Railroad Company	Stated cost, not verified, found in corporate records other than accounting records of The Hartford and Connecticut Valley Railroad Company; road, $2,608,930.46, and equipment, $255,558.13.	45.00	2,864,488.59
Pontiac Branch Railroad Company	Purchase price to the New York, Providence and Boston Railroad Company.	4.75	69,780.00
New Haven, New London and Stonington Railroad Company.	Purchase price to the New York, Providence and Boston Railroad Company.	13.50	411,681.10
The Contractors to Rebuild and Support Union Wharf and Pier in New Haven.	Purchase price to the carrier	0.00	177,600.00
Shore Line Railway	Cost, not verified, reported to public authorities	50.00	1,169,496.10
New York, Housatonic and Northern Railroad Company.	Purchase price to the Housatonic Railroad Company	5.36	65,000.00
Shepaug Railroad Company	Cost, not verified, reported to public authorities	32.00	27,223.96
Shepaug Valley Railroad	Cost, not verified, reported to public authorities	.....	819,708.76
Woonsocket and Pascoag Railroad Company.	Stated cost, not verified, found in corporate records other than accounting records.	9.50	300,000.00
Colchester Railroad Company	Stated cost, not verified, found in corporate records other than accounting records.	3.50	50,000.00
Watertown and Waterbury Railroad Company.	Stated cost, not verified, found in corporate records other than accounting records of The Naugatuck Railroad Company.	4.44	135,313.17
New Haven, Middletown and Willimantic Railroad Company.	Cost, not verified, reported to public authorities by the Boston and New York Air Line Railroad Company; road, $6,000,000, and equipment, $77,150.59.	50.00	6,077,150.59
Hopkinton Railroad Company	Cost, not verified, reported to public authorities	.....	292,525.10
Connecticut Coastal Railroad Company	Cost, not verified, reported to public authorities by The New England Railroad Company.	27.54	770,665.25
Total		253.89	13,488,576.55

Further details on the above items are given in the following paragraphs.

The Stamford and New Canaan Railroad Company issued its stock to the carrier, the holder of the defaulted bonds of the New Canaan Railroad Company, to the amount of $99,878.25. The carrier surrendered the stock, merged the company, and took the property, so that the amount last named was the cost to the carrier as recorded by it.

The Hartford and Connecticut Valley Railroad Company brought the property of the Connecticut Central Railroad Company to the carrier, having issued its stock of the par value of $800,000 and assumed a debt of $15,600 in the acquisition of the property. The amount stated in the foregoing table is the total of an unsupported statement found in the records of the Connecticut Central Railroad Company.

194 The New York, Providence and Boston Railroad Company recorded the purchase price of the Pontiac Branch Railroad Company and the New Haven, New London and Stonington Railroad Company at the amounts shown in the table. The price of the first named was $69,780, all in cash, while that of the second was composed of funded debt securities, $250,000, and cash, $161,681.10.

The Contractors to Rebuild and support Union Wharf and Pier in New Haven was not a carrier and owned no road. The whole stock was acquired by the carrier for $190,000. This represented the terminal property taken by the carrier for transportation purposes and other assets of the book value of $12,400. The difference, $177,600, was recorded as the purchase price of the property used by the carrier for carrier purposes.

The cost of the Shore Line Railway shown in the table is the cost reported at the date the property was leased to the New York and New Haven Railroad Company, November 1, 1870.

The Housatonic Railroad Company bought a part, 5.36 miles, of the road of the New York, Housatonic and Northern Railroad Company for $65,000 in cash. The cost of the whole road, about 22.36 miles, was reported to public authorities as road $649,074.77, and equipment $12,757.17.

The Shepaug, Litchfield and Northern Railroad Company acquired in reorganization the property of the Shepaug Valley Railroad Company for $600,000 in capital stock.

The Woonsocket and Pascoag Railroad Company issued $200,000 par value of capital stock, and $100,000 of funded debt securities. There is no available record to show the considerations received for these securities. In the general balance sheet statement, the sum of these amounts, $300,000, is shown as the investment in road and equipment. The carrier acquired the property by the purchase of the stock for $100,000 and the assumption of the funded debt at par, a total of $200,000.

The Colchester Railroad Company issued its capital stock of the par value of $25,000, and its funded debt securities in a like amount, but there is no available record to show the considerations received therefor, nor the cost of its road. The carrier bought all of the stock for $1,250, assumed the funded debt, and charged the sum of these items, $26,250, as the cost to it of the property represented.

A memorandum of the cost of The Watertown and Waterbury Railroad Company showed it to be $135,313.17. The road passed to The Naugatuck Railroad Company upon default under a mortgage securing bonds held by it. The Naugatuck Railroad Company's investment in the bonds was $18,400, and in capital stock $5,000, a total of $23,400, which was written off to profit and loss upon the acquisition of the property, but no identifiable amount was entered in the account for investment in road and equipment to represent it.

The New Haven, Middletown and Willimantic Railroad Company reported the cost of its property on September 30, 1874, as road, $6,000,000, and equipment $77,150.59, but there is no available record by which these amounts may be verified. The successor company wrote into its books $3,938,562.62 to represent the property of the New Haven, Middletown and Willimantic Railroad Company.

The New England Railroad Company brought to the carrier the road of the Connecticut 1871 which was purchased by The New York and New England Railroad Com-
195 pany for $290,377.69. The cost of this road as reported to public authorities was $770,665.25.

The expenditures made by the carrier, other than those made in the acquisition of completed roads, were for additions and betterments of the road acquired the construction of additional main tracks, yards and terminals, improved structures and roadway, grade-crossing elimina-

tions, and the electrification of more than 70 miles of road. The record of these expenditures for the whole life of the company, is not of a character to permit the complete distribution to particular parts of the system.

The original cost of equipment in use on date of valuation is shown in a restatement of the carrier's return of equipment, which follows hereinafter, but the manner of keeping the accounts for equipment affected the account for road. Additions and deductions were made in the account to meet the totals of several appraisals of equipment, and the account for road was used to adjust those differences.

Deductions from the book account for property worn out, sold, or otherwise withdrawn from transportation uses have not been accurately made, but the record is not sufficient to show what a correct adjustment should be. For a period prior to date of valuation the equipment account was credited with the estimated cost of replacement, instead of the amount originally charged as the cost of equipment retired. The appraised or agreed value of equipment, and other property not of fixed location, leased from other companies, is included with the cost of the owned property.

Cost of lands.—The carrier reports the original cost of all lands and rights owned, on date of valuation, as $42,137,770.92. We have excluded $223,711.92 as representing items not constituting land costs, as follows:

Leases of private lands	$394.00
Payment for right to change channel of river	150.00
Expired water right	106.00
Payment for construction of sidings returned as cost of land	6,160.01
Overstatement of consideration for one parcel	185.00
Payments for borrow-pit privileges and other rights which have expired	11,818.19
Payments for lands which have been disposed of	2,242.25
Payment for temporary use of land	550.00
Payment for damages incident to construction of road	231.00
Amounts named in deeds and condemnation awards in excess of recorded payments	33,957.02
Stated annual rentals for lease of wharfage rights from the city of New York	167,918.45
Total	223,711.92

The return includes $785,241.65 of costs that can not be allocated to parcels and that may be duplicated in the return. With respect to this item, the carrier returns $785,241.65 which it could not assign to parcels, and, on the

other hand, it returned a number of parcels for which it could not ascertain the recorded cost, but for which it reported the considerations named in deeds and awards. It is not improbable that the $785,241.65 is included, at least in part, in these considerations. Again, the carrier
196 disposed of certain lands, and these costs that can not be allocated may have applied, in part, to lands that the carrier no longer owns. It will be seen, therefore, that the condition of the record is such that a definite statement that the $785,241.65 is or is not duplicated in the return can not be made.

The return further includes costs of $2,047,039.55, including $10,039 paid since date of valuation, representing claimed expenditures for land, land damages, and expenses for grade-crossing eliminations.

The carrier has filed a claim with our Bureau of Valuation amounting to $980,694.56 in connection with the cost of grade-crossing eliminations, which includes a part of the cost of lands reported by the carrier. If the original cost of the lands is used in lieu of the ascertained present value of lands, and the carrier's claim is included in the cost of reproduction new, there would be a duplication of some indeterminate part of the amount of that claim. For that reason this item is hereinafter classified and explained separately from those items for land concerning which no further explanations appear to be necessary.

The return does not include $299,314, the portion of $416,367.24 expended by the carrier for certain rights in public domain, applicable to the unexpired period of the lease.

Applying the foregoing items, the resulting balance of $39,381,091.80, made up in part of costs supported by accounting records and in part of substantial deed considerations which the carrier claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification.	Costs supported by accounting records. Money outlay.	Other than money outlay.	Costs not supported by accounting records.
As a whole.			
Carrier lands wholly owned and used	$22,239,657.38	$1,983,809.60	$1,039,469.36
Carrier lands jointly owned and used, carrier's portion	16,052.36	.....	.....
Noncarrier lands wholly owned	7,288,002.53	.....	45,227.67
Noncarrier lands jointly owned, carrier's portion	1,460.96	.....	.....
Lands classified as partly carrier and partly noncarrier, owned	3,452,705.55	2,688,850.53	34,732.58
Carrier rights in public domain, owned and used	299,786.00	.....	.....
Carrier rights in private lands, owned and used	291,337.28	.....	.....
In Massachusetts.			
Carrier lands owned and used	4,793,868.26	1,983,809.60	70,323.88
Noncarrier lands owned	4,876,435.10	.....	6,300.00
Lands classified as partly carrier and partly noncarrier, owned	361,524.75	2,688,850.53	1,517.65
Carrier rights in private lands, owned and used	24,896.97	.....	.....

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Classification.	Costs supported by accounting records.	Costs not supported by accounting records.
In Connecticut.		
Carrier lands wholly owned and used	$11,787,035.03	$735,308.98
Carrier lands jointly owned and used, carrier's portion	13,343.15	.....
Noncarrier lands owned	1,437,144.08	38,562.67
Lands classified as partly carrier and partly noncarrier, owned	2,231,533.90	23,375.59
Carrier rights in public domain, owned and used	472.00	.....
Carrier rights in private lands, owned and used	31,306.60	.....
In New York.		
Carrier lands owned and used	1,870,995.41	120,939.32
Noncarrier lands owned	452,221.18	165.00
Lands classified as partly carrier and partly noncarrier, owned	598,422.76	3,000.00
Carrier rights in private lands, owned and used	8,100.00	.....
Carrier rights in public domain, owned and used	299,314.00	.....
In Rhode Island.		
Carrier lands wholly owned and used	3,699,599.31	112,897.18
Carrier lands jointly owned and used, carrier's portion	2,709.21	.....
Noncarrier lands wholly owned	522,202.17	200.00
Noncarrier lands jointly owned, carrier's portion	1,460.96	.....
Lands classified as partly carrier and partly noncarrier, owned	261,224.14	6,839.34
Carrier rights in private lands, owned and used	227,033.71	.....
In not allocated to States.		
Carrier lands owned and used	88,159.37	.....

The total amount $4,672,660.13 designated as "other than money outlay" has been returned by the carrier as land cost, and consists of the following:

Carrier land from South Bay Wharf and Terminal Company:		
Value of 14,801 shares of stock of the South Bay Wharf and Terminal Company, owned by the carrier and accepted as consideration of real estate conveyed	$1,962,991.00	
Mortgages assumed	41,500.00	
	2,004,491.00	
Less net difference of other assets and liabilities acquired therewith	20,681.40	$1,983,809.60
Land partly carrier and partly noncarrier from the Roxbury Central Wharf Company:		
Value of 2,993 shares of stock of the Roxbury Central Wharf Company owned by the carrier, accepted as consideration of real estate conveyed	755,993.00	
Interest on above investment, general auditor's suspense account, from date of purchase to Apr. 30, 1908	41,413.34	
First-mortgage 5 per cent note of the Roxbury Central Wharf Company due Sept. 1, 1912	290,000.00	
	1,087,406.34	
Less net difference of other assets and liabilities acquired therewith	38,955.81	1,048,450.53
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Land partly carrier and partly noncarrier from Boston Consolidated Gas Company:		
Value of 5,452 shares of the carrier's capital stock at $200 per share		1,090,400.00
Land partly carrier and partly noncarrier from the Boston Wharf Company:		
Cash $50,000 and 3,571 shares of the carrier's capital stock issued for		550,000.00
Total		4,672,660.13

The recorded cost of land and land damages incident to the elimination of grade crossings, hereinbefore referred to, was assumed by the respective participants as follows:

The carrier	$1,460,876.04
Boston and Maine Railroad	8,785.37
State of Connecticut	5,491.09
State of Massachusetts	156,704.13
Various municipalities	415,182.92
Total	2,047,039.55

The proportion expended by the carrier has been verified in the accounting records and consists of recorded money outlay classified as shown hereunder:

Carrier lands owned and used	$1,280,963.12
Noncarrier lands owned	9,755.88
Lands classified as partly carrier and partly noncarrier owned	170,064.74
Carrier rights owned and used	92.30
Total	1,460,876.04

The carrier has submitted to our Bureau of Valuation a statement aggregating $980,694.56 for consequential damages in connection with the elimination of grade crossings which it claims should be considered in the reproduction costs of its property.

This claim has been classified as follows:

Items included in the land return	$1,186,439.04
Items not included in the land return	81,286.24
Total	1,267,725.28
Less amount allocated to other parties	287,030.72
Balance claimed by carrier	980,694.56

Inasmuch as the total expenditure includes such a large proportion of items appearing in the land return, the amount claimed as consequential damages must of necessity include an equal proportion of such items which, if allowed as part of the reproduction costs of the crossings would, to that extent, be a duplication of items included as part of the original cost of lands the total amount of which can not be definitely stated, if original cost of land is used in lieu of present value.

199 *Cost of roadway machines, shop machinery, and power-plant machinery.*—The carrier reported costs of $4,755,924 for roadway machines, shop machinery, and power-plant machinery owned on date of valuation. After checking, eliminating minor small errors, and separating verified costs from amounts estimated by the carrier, the following statement results:

Classification.	Units.	Costs supported by accounting records.	Units.	Estimates of the carrier.
Roadway machines	754	$33,965	761	$52,830
Shop machinery	.....	707,979	.....	1,356,278
Additions and betterments	.....	.....	.....	2,970
Power-plant machinery	.....	2,234,749	.....	256,657
Additions and betterments	.....	.....	.....	823
Power-substation apparatus	.....	16,079	.....	93,073
Total	.....	2,992,772	761	1,762,631

Amounts stated as estimates of the carrier cannot be verified from its accounting records.

Cost of equipment.—The carrier reports the cost of equipment owned on date of valuation as $83,745,160. In verifying the carrier's returns 51 units of passenger-train cars, with costs of $292,029, were excluded as not being in service on date of valuation. In addition, one unit of work equipment, with costs of $9,090, has been transferred to floating equipment account. After making the adjustments noted, eliminating minor errors, and separating verified costs from amounts estimated by the carrier, the following statement results:

Classification.	Units.	Costs supported by accounting records.	Units.	Estimates of the carrier.
Steam locomotives	939	$12,433,916	226	$2,661,467
Additions and betterments	.....	15,561	.....	581,725
Other locomotives	102	3,763,619	2	10,994
Additions and betterments	.....	88,785	.....	58,536
Freight-train cars	34,342	37,493,271	326	292,312
Additions and betterments	.....	3,250	.....	375,774
Passenger-train cars	2,193	16,166,787	249	1,761,082
Additions and betterments	.....	124,132	.....	882,250
Motor equipment of cars	99	625,175	62	72,621
Additions and betterments	.....	23,732	.....	27,395
Floating equipment	72	3,039,727	2	90,160
Additions and betterments	.....	.....	.....	20,232
Work equipment	9	973,708	870	1,765,409
Additions and betterments	.....	273	.....	82,818
Miscellaneous equipment	2	10,873	9	739
Total	38,368	74,762,809	1,746	8,683,514

The work-equipment account includes one electric crane jointly owned and used with The New York Central Railroad Company, which cost $60,251.81, including freight charges. The carrier's proportion of this cost, $25,271, together with a charge of $249 for inspection, is included in the above account.

Costs stated as estimates by the carrier cannot be verified from its accounting records.

100 Improvement on Leased Railway Property

The investment of the carrier in improvements on leased railway property on date of valuation is found to be $4,264,961.10, attaching to the various lessor properties as follows:

Lessor.	Total expenditures.	Retirements and adjustments.	Net balance as restated.
Boston and Providence	$2,380,248.91	$115,646.79	$2,264,602.12
Chatham Railroad	205.17	0.00	205.17
Norwich and Worcester	57,612.93	3,526.33	54,086.60
Old Colony Railroad	118,004.44	3,634.44	114,370.00
Providence and Worcester	1,854,115.91	35,968.02	1,818,147.89
Holyoke and Westfield	22,066.43	8,517.11	13,549.32
Total	4,432,253.79	167,292.69	4,264,961.10

The balance sheet on date of valuation shows the carrier's investment in improvements on leased railway property as $3,990,421.40. The difference between this figure and the one given above is $274,539.70, of which $260,990.38 represents amortization charges to income and $13,549.32 charges to investment in road and equipment account.

Under terms of the leases the carrier may collect from the lessors certain expenditures made for additions and betterments to the leased property. Such recollected expenditures are not dealt with here; the total shown being the expenditures which are not recoverable. Beginning in 1906, and continuing to date of valuation, charges were made to income, as rent for leased roads, of a proportion of the irrecoverable expenditures and these accounts correspondingly reduced. The purpose was to exhaust, through charges to income, the amounts representing assets which would be surrendered at the termination of the leases.

The carrier purchased lands along the lines of some of its leased roads and has charged the cost thereof to its investment in road and equipment account. As the title to these lands is retained by the carrier and the cost is included in its returns of the cost of lands, no change of its stated accounts is made on account of these purchases. The amounts involved are shown as follows:

Along line of the—	
Old Colony Railroad	$5,325.00
Providence and Worcester	63,083.27
Providence, Warren and Bristol	1,276.10
Boston and Providence	144,758.10
Total	214,442.47

Miscellaneous Physical Property.

On date of valuation the carrier showed on its books as investment in physical property other than road and equip-

ment $5,357,414.93. This is composed of real estate at Boston called the Park Square property, with a book value of $4,870,017.91, and four short trolley lines in Connecticut, with a book value of $487,397.04. The Park Square property was acquired by the carrier from the Boston and Providence, as an incident to the relocation of the
101 road of the Boston and Providence to give it an entrance to the passenger station known as the South Station of The Boston Terminal Company. This investment first appeared in the carrier's balance sheet of June 30, 1904. The right of way and station grounds of the Boston and Providence, released by change of road location, were taken by the carrier at an estimated value of $5,120,000. No money was paid directly to the Boston and Providence, but the carrier provided a new right of way and built or furnished a new line to the South Station at a recorded cost of $4,810,752.66 and paid $100,000 as a subscription to capital stock of The Boston Terminal Company for account of the Boston and Providence. The sum of these amounts, $4,910,752.66, was charged against the purchase price of the property, and the remainder, $209,237.34, was credited to the Boston and Providence in open account. In 1910, this property was conveyed to a corporation called the Park Square Real Estate Trust, and its stock of $5,200,000 was carried at a book value of $5,071,331.87. This conveyance having been held unlawful by the Supreme Judicial Court of Massachusetts, the property was restored to the accounts in the following year. Additional expenditures were made to the amount of $1,147,207.55. A part of the land was sold for $1,396,949.64 and a credit adjustment of $240 was entered in the account, resulting in a net book value of the investment on date of valuation of $4,870,017.91.

Certain lands classified herein as noncarrier lands and certain other lands classified as partly carrier and partly noncarrier and not represented in the carrier's account for investment in miscellaneous physical property. However, certain lands with costs of $3,524,831.45 owned by the carrier and charged to its account for investment in road and equipment have been classified herein as noncarrier lands. Certain lands classified as partly carrier and partly noncarrier, with costs supported by accounting records of $6,141,556.08 and amounts not supported by accounting

records of $34,732.58, have been charged by the carrier to its account for investment in road and equipment. The amount that would be includible in the miscellaneous physical property account to represent the investment in non-carrier lands has not been fully ascertained.

The carrier retained three short pieces of the trolley lines acquired from other companies, and built about 1.5 miles, the book cost of all aggregating $487,397.04. The Thompson and Willimantic Railroad Company line, representing book cost of $150,000, was formerly a part of the Peoples Tramway Company, and consists of 5.9 miles of track from West Thompson, Conn., to the Connecticut-Massachusetts State line. The Suffield line, representing $91,645.06, book cost, was formerly a part of the Suffield Street Railway Company, and consists of 4.7 miles of track extending from Suffield, Conn., to the Massachusetts State line. The Mianus line, representing $191,595.44 of book cost, was formerly a part of the Greenwich Tramway Company and consists of 5.6 miles of track extending from Mianus, Conn., to the New York State line. The Canaan line, representing $54,156.54 of book cost, was built by the carrier, consists of 1.5 miles of track, and extends from Canaan, Conn., to the Massachusetts State line. The Mianus line is leased to the New York & Stamford Railway Company and the annual rent, $23,-201.78, is carried in the income account as income from lease of road. The results of operations of the other lines are treated as revenues from miscellaneous operations. In the fiscal year 1915 the results were: Revenues $49,877.30, expenses $43,322.59, taxes $5,361.37, resulting in a net amount after deducting taxes, of $1,193.34.

102 The carrier's books record cash in the amount of $3,786,642.93, none of which is invested in working capital for operating purposes. Of the material and supplies recorded at $5,582,699.18, $4,650,000 represents a normal stock held for and useful in common-carrier operation. The remaining $932,699.18 consists of unapplied construction material, scrap, and material held in excess of the carrier's normal operating requirements as shown by its actual experience.

Investment in Other Companies

The carrier held as investments in other companies on date of valuation an aggregate of $227,399,330.18, classified in the balance sheet as follows:

Funded debt	$18,785,696.00
Capital stock	162,453,518.29
Short-term notes	38,515,650.14
Advances	7,644,465.75
Total book value	227,399,330.18

Certain of these securities, aggregating in book value $45,714,223.71, have been pledged as collateral for an issue of 1-year 5 per cent collateral notes dated May 1, 1915 of face value $27,000,000, schedule of which hereinafter appears.

The considerations given for $18,785,696, book value, of funded debt securities acquired were as follows:

Funded debt securities acquired.	Par value.	Book value.	Consideration.	
			Cash.	Other.
Berkshire Street Railway Company, 20-year 5 per cent debentures, due 1925	$200,000.00	$200,000.00	$200,000.00	.....
Central New England Railway Company 5 per cent income bonds, due 1949	608.50	608.50	.....	$608.50
Central New England Railway Company, first-mortgage, 50-year 4 per cent gold bonds, due 1961	1,500,000.00	1,270,027.50	1,270,027.50	.....
Dutchess County Railroad Company, first-mortgage 4½ per cent gold bonds, due 1940	5,000.00	5,230.00	5,230.00	.....
Chicago and Eastern Illinois Railroad Company, first-mortgage, consolidated 5 per cent 50-year bonds, due 1937	22,000.00	25,300.00	25,300.00	.....
Harlem River and Port Chester, 15-year, 5 per cent, prior lien gold debentures, dated May 1, 1915	13,000,000.00	13,000,000.00	.....	13,000,000.00
New York & Stamford Railway Company, first and refunding 50-year 4 per cent gold bonds, due 1958	678,000.00	599,880.00	.....	599,880.00
Park Square Theatre, Incorporated, second-mortgage 5 per cent notes, due 1932	320,000.00	320,000.00	.....	320,000.00
Pawtuxet Valley Electric Street Railway Company, 5 per cent bonds, due 1933	38,000.00	39,900.00	39,900.00	.....
The Chicago, Rock Island, and Pacific Railroad Company, general mortgage 4 per cent gold bonds, due 1988	38,000.00	38,000.00	38,000.00	.....
The Vermont Company, first-mortgage 5 per cent 20-year gold bonds, due 1931	846,000.00	846,500.00	114.34	846,385.66
New York, Westchester, and Boston Railroad Company, first-mortgage 4½ per cent gold bonds, due 1946	2,190,000.00	2,190,000.00	.....	2,190,000.00
The Westchester Street Railroad Company, first-mortgage 5 per cent gold bonds, dated Sept. 1, 1914	222,000.00	222,000.00	.....	222,000.00
Wood River Branch Railroad Company, first-mortgage 5½ per cent bonds, due 1924	56,500.00	28,250.00	28,250.00	.....
Total	19,116,108.50	18,785,696.00	1,606,821.84	17,178,874.16

103 The carrier also reacquired funded debt securities of its own issue or assumption, for considerations not separable from the consideration attaching to funded debt securities acquired of other companies, as follows:

Funded debt securities reacquired.	Par value.	Book value.	Considerations.	
			Cash.	Other.
Carrier convertible 6 per cent debenture certificates, due Jan. 15, 1948.	$487,800.00	$487,800.00	.....	$487,800.00
Convertible, 3½ per cent debenture certificates, due Jan 1, 1956....	852,100.00	852,100.00	.....	852,100.00
Nonconvertible 3½ per cent debentures, due Mar. 1, 1947.....	9,000.00	9,000.00	.....	9,000.00
Nonconvertible 3½ per cent debentures, due Apr. 1, 1954.....	2,100.00	2,100.00	.....	2,100.00
The Consolidated Railway Company, 3–3½–4 per cent debentures, due Feb. 1, 1930.....	2,350.00	2,350.00	$2,350.00	.....
New York, Providence and Boston Railroad Company, — per cent general-mortgage bonds, due Apr. 1, 1942.....	247,000.00	247,000.00	241,200.00	5,800.00
The Providence Securities Company, 4 per cent gold debentures, due May 1, 1957.....	719,000.00	719,000.00	607,441.87	111,558.13
The Worcester & Connecticut Eastern Railway Company 4½ per cent first-mortgage gold bonds, due Jan. 1, 1943.....	144,000.00	144,000.00	144,000.00	.....
Total.....	2,463,350.00	2,463,350.00	994,991.87	1,468,358.31

The total of such securities of other companies acquired were in some cases greater than the amounts now held, some of these securities having been sold or exchanged. The consideration given in the acquisition and reacquisition and those received at the disposal, resulting in the net acquisition of $18,785,696 and the net reacquisition of $2,463,350 of securities above listed, may be summarized as follows:

Given in acquisition.	Consideration.	Received at disposal.
$4,416,621.52	Cash	$28,921,247.75
22,200.00	Stock of the carrier	.....
4,000,000.00	Funded debt of the carrier	.....
23,130,344.96	Funded debt of other companies	200,000.00
76,586.11	Bills payable issued	.....
4,986,560.40	Bills receivable surrendered	.....
320,000.00	Physical property surrendered	.....
18,368,415.11	Open accounts	308,857.14
575,856.64	Central New England Railway Company stocks and bonds not separable	5,561,445.93
200,000.00	Acquired with merged roads	.....
4,440.27	Other accounts	41,805.01
56,101,035.01	Total	35,038,355.83
61,316.38	Less profit and loss net	242,683.20
	Net receipts	34,790,672.63
	Net considerations for securities held on date of valuation	21,249,046.00
56,039,718.63	Net given in acquisition	56,039,718.63

The division between cash and other considerations of the book value of each security held, is as nearly exact as the record will permit.

104 The considerations given for $162,453,518.29 book value of capital stock securities acquired were as follows:

Capital stock acquired.	Par value.	Book value.	Consideration. Cash.	Consideration. Other.
Berkshire Street Railway Company	$5,398,100.00	$6,371,395.58	$2,751,395.58	$3,620,000.00
Boston and Lowell Railroad Corporation	41,200.00	88,775.13	88,775.13	.....
The Boston Terminal Company	200,000.00	200,000.00	100,000.00	100,000.00
Providence, Warren and Bristol, common	486,700.00	730,212.67	729,451.00	761.67
Providence, Warren and Bristol, preferred	100.00	220.00	220.00	.....
Central New England Railway Company, common	4,792,100.00	869,110.45	247,542.55	621,567.90
Central New England Railway Company, preferred	3,740,236.78	1,052,617.51	296,942.51	755,675.00
The Concord & Montreal Railroad, common	144,800.00	233,307.18	233,307.18	.....
The Concord & Montreal Railroad, preferred	102,100.00	162,458.52	162,458.52	.....
Concord and Portsmouth Railroad	1,800.00	3,285.00	3,285.00	.....
Connecticut River Railroad Company	101,500.00	276,220.04	276,220.04	.....
Hartford & Connecticut Western Railroad Company	1,748,200.00	1,201,063.69	103,337.85	1,097,725.84
The New York Connecting Railroad Company	1,500,000.00	1,527,204.33	.....	1,527,204.33
The Harlem River and Port Chester	1,000,000.00	1,000,000.00	.....	1,000,000.00
Hereford Railroad Company	24,600.00	21,928.77	21,928.77	.....
Boston Railroad Holding Company, common	3,106,500.00	3,106,500.00	100,000.00	3,006,500.00
Boston Railroad Holding Company, preferred	24,493,900.00	24,493,900.00	4,649,900.00	19,844,000.00
Holyoke and Westfield	20,000.00	20,000.00	.....	20,000.00
Iron Works Aqueduct and Water Company	100.00	100.00	100.00	.....
Lowell and Andover Railroad Company	19,300.00	41,919.26	41,919.26	.....
Manchester and Lawrence Railroad	6,300.00	14,081.66	14,081.66	.....
Massawippi Valley Railroad Company	35,400.00	46,020.00	46,020.00	.....
Millbrook Company	100,000.00	100,000.00	100,000.00	.....
Nashua and Lowell Railroad Corporation	8,400.00	20,170.51	20,170.51	.....
New England Navigation Company	49,405,500.00	53,322,899.48	1,978,608.40	51,344,291.08
New York and Stamford Railway Company	500,000.00	610,643.40	.....	610,643.40
Northern Railroad of New Hampshire	92,200.00	130,750.27	130,750.27	.....
Norwich and Worcester Railroad Company	97,100.00	219,038.19	219,038.19	.....
Old Colony Railroad	9,813,200.00	13,065,341.80	5,852,955.98	7,212,385.82
New York, Ontario and Western Railroad Company, common	29,160,000.00	13,105,185.62	13,105,185.62	.....
New York, Ontario and Western Railroad Company, preferred	2,200.00	3,212.00	3,212.00	.....
The Connecticut and Passumsic Rivers Rail Road Company	146,400.00	208,162.44	208,162.44	.....

Pemigewasset Valley Railroad	71,000.00	99,676.51	99,676.51	.....
The Pennsylvania Railroad Company	58,400.00	71,907.64	19,865.51	52,042.13
Peterborough Railroad	8,600.00	8,390.00	8,390.00	.....
Pittsfield and North Adams Railroad Corporation	5,000.00	6,965.26	6,965.26	.....
Post Publishing Company	1,000.00	1,000.00	.....	1,000.00
Boston and Providence	524,600.00	1,582,443.18	1,582,443.18	.....
Queensbury Mills, Incorporated	266.27	266.27	252.83	13.44
Quincy Quarries Company	1,900.00	2,110.00	.....	2,110.00
The Rhode Island Company	9,685,500.00	24,352,336.41	8,698,044.40	13,654,292.01
Roxbury Central Wharf Company	700.00	7.00	.....	7.00
Rutland Railroad Company	2,352,050.00	2,364,977.15	.....	2,364,977.15
South Bay Wharf and Terminal Company	900.00	9.00	.....	9.00
Upper Coos Railroad	7,300.00	10,242.75	10,242.75	.....
The Vermont Company	650,000.00	571,164.31	2,000.00	569,164.31
Vermont and Massachusetts Railroad Company	18,400.00	30,439.77	30,439.77	.....
Waterbury Gas Light Company	536,800.00	1,174,027.86	327,451.64	846,576.22
Waterbury Hotel Corporation	1,500.00	1,500.00	.....	1,500.00
New York, Westchester and Boston Railroad Company	4,924,937.50	6,241,951.76	1,816,445.44	4,425,506.32
The Westchester Street Railroad Company	700,000.00	905,783.53	9,403.90	896,379.63
Westinghouse Air Brake Company	450.00	967.00	967.00	.....
Wilton Railroad Company	9,800.00	21,389.14	21,389.14	.....
Wood River Branch Railroad Company	33,600.00	21,477.50	1,477.50	20,000.00
Providence and Worcester Railroad Company	955,100.00	2,738,762.75	2,738,762.75	.....
Total	156,835,740.55	162,453,518.29	46,859,186.04	115,594,332.25

105 The total acquisitions were in some cases greater than the amount now held, some of the shares having been sold or exchanged. The considerations given in acquisition and received at disposal may be summarized as follows:

Given in acquisition.	Consideration.	Received at disposal.
$51,851,654.54	Cash	$4,826,468.50
	Stocks canceled in acquisition	166,000.00
1,000,000.00	Carrier's funded debt	
35,937,460.00	Funded debt other companies	
5,057,100.00	Carrier's capital stock	
10,932,576.75	Capital stock of other companies	
4,373,877.41	Bills payable	7,500,000.00
3,693,406.88	Bills receivable surrendered	
65,797,214.01	Open accounts	1,264,899.74
1,293,282.28	Acquired with merged roads	
2,399,815.70	Property surrendered	
129,075.92	Interest receivable canceled	
1,884,187.50	Expenditures for improvements on Old Colony Railroad property repaid	
6,456.52	Commissions paid	
2,500.00	Acquired with leased property	
171,387.93	Other accounts	23,012.73
	Exchanged for other securities	1,865,338.54
	Exchanged for property	2,718,984.00
53,985.78	Profit and loss	3,765,759.42
	Total received	22,130,462.93
	Net amount chargeable to stocks held on date of valuation	162,453,518.29
184,583,981.22	Total given	184,583,981.22

The carrier's investment in the notes of others, aggregating $38,515,650.14, classified and showing interest rates, are as follows:

Maker.	Per cent.	Amount.
Harlem River and Port Chester	4	$15,000,000.00
Hartford & Connecticut Western Railroad Company	5	819,781.71
New York, Westchester and Boston Railroad Company	5–6	5,478,751.00
Providence, Warren and Bristol	6	352,397.30
Rutland Railroad Company	6	150,000.00
Wood River Branch Railroad Company	5–6	4,500.00
Berkshire Street Railway Company	6	3,364,760.45
The Connecticut Company	6	2,025,000.00
New York and Stamford Railway Company	6	189,872.08
Rhode Island Company	6	3,230,001.00
The Westchester Street Railroad Company	6	38,643.30
City Lumber & Coal Company	5	10,000.00
Housatonic Power Company	6	1,240,000.00
P. C. Larkin	5	63,894.05
Milbrook Company	5–6	2,278,241.21
New England Navigation Company	4½–5–6	3,904,808.04
Salts Textile Manufacturing Company	5	75,000.00
Shearer Realty Trust	5	150,000.00
Trustee Massachusetts Automobile Club Trust	5	90,000.00
Total		38,515,650.14

Advances made by the carrier to others aggregated $7,644,465.75 and are shown in detail as follows:

Boston and Providence		$101,060.62
New York, Westchester and Boston Railroad Company (nominal value of account for advances amounting to $2,764,775 written down because payment will likely not be made)		1.00
Norwich and Worcester		820,729.04
Old Colony Railroad		720,671.63
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The New York Central Railroad Company (as carrier's share of cost of buildings in Grand Central Terminal group):		
Biltmore Hotel	$2,800,000.00	
Merchants and Manufacturers Exchange	1,033,743.08	
Yale Club	250,000.00	
Adams Express Building	277,399.68	
United Cigar Stores Building	162,851.36	
Terminal Office Building	1,152,800.00	
Vanderbilt Concourse Building	325,000.00	
		$6,001,794.12
Total		7,644,465.75

In addition, the carrier made cash advances to the Boston Railroad Holding Company to the amount of $2,336,215.67, carried under account Miscellaneous Accounts Receivable and so shown in the balance sheet. These advances have been written down to $2.

Salient details of investment holdings.—Certain salient details bearing on the various investment holdings, with reference to their acquisition or otherwise, are given as follows:

Securities of roads leased by the Boston and Maine Railroad were acquired through the carrier's insurance and accident and casualty funds. These funds were established to provide for losses by fire and for personal injury claims. The funds were entrusted to committees of the board of directors with authority to make investments. The stocks here considered were purchased in small lots at prices ranging from 87½ for the Hereford Railroad Company stock to 277 paid for a part of the stock of The Connecticut Company. The first of these purchases was made in 1911. When the funds were abolished in 1914 the securities were turned into the carrier's treasury. These stocks are all entitled to dividends under the leases to the Boston and Maine Railroad. The total book value is $1,417,216.95 and the annual return is $58,381, or 4.1 per cent.

The Boston Railroad Holding Company stock represents the carrier's interest in the Boston and Maine Railroad, certain details of the acquisition of which are described in the report of this commission published in 31 I. C. C. 32. The facts relating to that investment, as shown by the accounting records, are here briefly set down. The carrier acquired $20,012,000 of the Boston Railroad Holding Company's 4 per cent debentures for cash and notes. The debentures were exchanged for stock, and other lots of stock were secured through the New England Navigation Company or direct from the Boston Railroad Holding Company. All of these transactions were at par and the considerations passed were cash or notes, except a credit to the Boston Railroad Holding Company of $3,120,000 entered in an open account. The total of stock acquired was 31,065 shares of common and 272,939 shares of 4 per cent preferred, all of the par value of $100 per share, or $30,400,000. The carrier sold 28,000 shares of preferred at 94, or at a loss of $168,000. On date of valuation the amount held was 31,065 shares of common and 244,939 shares of preferred, all of the total par and book value of $27,600,400. The return from this investment in the fiscal year 1915 was $24,493.90 less than one-tenth of 1 per cent. The dividend on the preferred stock sold is guaranteed by the carrier. The carrier has made cash advances to the Boston Railroad Holding Company to the amount of $2,336,215.67, which has been written down to the nominal sum of $2, as there is but little prospect of payment. The nominal value is included in miscellaneous accounts receivable on the balance sheet.

107 The Old Colony Railroad stock, under provisions of lease to the carrier in 1893, was made exchangeable, at the option of the holder, for stock of the carrier at the rate of nine shares for 10. Under this provision 50,571 shares of carrier stock were exchanged for 56,190 shares of the Old Colony Railroad. The remainder of the Old Colony Railroad stock held, 41,942 shares, stands in the books at an average of $190.94. The total number of shares is 98,132 of the par value of $9,813,200 and the book value $13,065,341.80. This is a net amount. The total number of shares acquired, in addition to those received for carrier stock, was 55,543, costing an average of $188.27, of which 13,601 shares were sold at an average of $180.05, entailing a loss of $111,800. Under the lease the stock re-

ceives 7 per cent, which is 5.2 per cent on the book value. The carrier has charged the Old Colony Railroad in open account $720,880.97 upon which no interest is paid.

The Boston and Providence (Mass.) stock held by the carrier was bought for cash in relatively small lots during the period 1904 to 1913; 5,246 shares of the par value of $524,600 cost $1,582,443.18, or $301.64 a share. Under the lease this stock is entitled to an annual dividend of 10 per cent, but on the cost of the stock the dividend is equal to 3.3 per cent. The Boston and Providence (Mass.) has been charged $101,060.62 in open account, but no interest is paid upon this balance.

The Providence, Warren and Bristol common stock, in amount 4,867 shares and 1 share of preferred stock, of total par value of $486,800, were acquired at a cost of $150.05 per share, making book value $730,432.67. The road of the Providence, Warren and Bristol is held under a long-term lease which provides a dividend of 6 per cent per annum on the stock. The actual return to the carrier is about 4 per cent on the book value of its holdings. The carrier also holds notes of this company to the amount of $352,397.30, upon which interest at 6 per cent is paid.

The Harlem River and Port Chester capital stock to the extent of the whole issue, of par value $1,000,000, is held by the carrier, for which it gave cash or the equivalent, at par. The stock is entitled to 7 per cent per annum under a lease by which the carrier holds the property represented by the stock. The carrier also owns $13,000,000 15-year 5 per cent debentures and $15,000,000 of 1-year 5 per cent notes. As the carrier pays as rent under the lease the dividend on the stock and the interest on the debt, all of which is held by it, there is no actual money payment, but the amounts appear on both sides of the carrier's income account.

The Providence and Worcester stock, in amount 10,151 shares, of par value $1,015,000, was acquired at $287.57 per share. Of these, 600 shares were sold at about $300 per share. The remainder, 9,551 shares, has a book value of $2,738,762.75, or $286.75 a share. The lease, under which the carrier holds the property of this company, provides a dividend of 10 per cent, but on the book value the return is 3.5 per cent.

The Norwich and Worcester stock, in amount of 971 shares, was acquired by the carrier for $219,038.19, which price is equal to $225.58 a share. The par value is $97,100. Under the lease the stock gets 8 per cent a year, so the investment affords a return of about 3.5 per cent. The carrier has advanced to the Norwich and Worcester $820,729.04. No interest is paid on this amount.

New York, Ontario and Western Railroad Company common stock to an amount of 291,600 shares was acquired by the carrier in November, 1904, for $13,979,985.62. These shares were delivered to the carrier and paid for as follows: By J. P. Morgan & Company, 5,800 shares at 45.94, $266,460.62; by Kuhn, Loeb & Company, 285,800 shares at 47.98, $13,713,525; total 291,600 shares, $13,979,985.62. In January, 1905, a dividend of $3 per share was re-
108 ceived and applied to reduce the cost by $874,800, leaving the book cost of the stock as $13,105,185.62. In February, 1905, 22 shares of preferred stock were bought at 146, or for $3,212, making the total investment $13,108,397.62. The stock held is 50.2 per cent of the total issued. All of the transactions involved in these purchases were recorded as cash transactions. On the day the common stock was acquired, the carrier gave its six months, 3½ per cent notes for $14,000,000. On May 1, 1905, the notes were extended for two months and on July 1 they were paid off out of the proceeds of $15,000,000 50-year 4 per cent debentures dated July 1, 1905. The common stock made no return in the fiscal year 1915, the preferred paid 6 per cent on $132.

The Central New England Railway Company investment was originally made in 1904, when 28,655 shares of common stock, 26,006 shares of preferred, and $5,251,000 par value of general-mortgage 5 per cent income bonds were purchased for $5,000,000 par of carrier's 4 per cent 10-year debentures, due in 1914. Considering the debentures at par, this was 46.65 per cent of the par of the securities bought. This lot was purchased from or through Edward D. Adams. Other small lots of stock were purchased through J. P. Morgan & Company at prices ranging from 9 to 250 per cent of par. When the lump sum given for the first lot was divided among the three classes, the common stock was recorded at 15 and the preferred at 25.

The book investment now shows the common at about 18 and the preferred at 40, the totals being 47,921 shares of common and 37,400 shares of preferred, with $136.78 par of preferred scrip, all of the par value of $8,532,236.78 and book value of $1,921,727.96. The dividends for the fiscal year 1915 were 2 per cent on the common and 6 per cent on the preferred, which was equal to about 16 per cent on the book investment. The stock held by the carrier is more than 99 per cent of the total issued. The general-mortgage 5 per cent bonds of the Central New England Railway Company, purchased with the stock and other bonds of the same issue, amounting in all to $7,231,000, costing about $5,494,727.43, were exchanged for a new issue of first-mortgage 4 per cent 50-year bonds, dated January 1, 1911, of the par value of $5,494,244.93. Other purchases of the 4 per cent bonds were made direct from the issuing company until the total par value held was $13,427,000. Besides the old bonds exchanged for the 4 per cent bonds, the carrier gave up bonds of constituent companies of the Central New England Railway Company of the book value of $972,-102.50, paid $2,096,165.53 in cash, and gave the Central New England Railway Company credit for $2,138,341.97, so that the whole lot cost the carrier about 79.7 per cent of par. These first-mortgage 4 per cent bonds of January 1, 1911, of the par value of $11,927,000 were sold for $10,-945,161, or 91.76 per cent of par, the profit being $1,514,-333.57. The remainder of the par value of $1,500,000 is in the carrier's account at a book value of $1,270,027.50, or about 84.66 per cent of par. The carrier guarantees the principal and interest of the bonds sold.

Hartford & Connecticut Western Railroad Company capital stock of par value $1,666,600 was bought from the Central New England Railway Company in 1911 at 69.68 per cent of par. Other small lots of the same stock were acquired at prices running from 44 to 60. The total acquired is 17,482 shares, par value $1,748,200, which is more than half of the entire issue, with a book value of $1,201,063.69. The stock is entitled to an annual dividend of 2 per cent under a lease of the Hartford and Connecticut Western Railroad Company to the Central New England Railway Company. This makes about 3 per cent on the carrier's book investment. The carrier holds a note of the Hartford and Connecticut Western Railroad Company for $819,-

781.71, which bears interest at 5 per cent per annum. The note was received from the Central New England
109 Railway Company in the course of settlement of open accounts and represents to the carrier the expenditure of cash or its equivalent.

Boston Terminal Company stock of $200,000 par value is held by the carrier. The carrier controls under leases holdings of $100,000 par value each of the Old Colony Railroad and the Boston and Providence. The total stock issued is $500,000 and the remaining $100,000 is held by the Boston & Albany Railroad Company or by its lessee, The New York Central Railroad Company. The carrier's subscription of this stock, $100,000, was paid in cash and it received a like amount of stock from The New England Railroad Company when the latter was merged. The Boston Terminal Company owns the South Station at Boston, which is used by its stockholders as tenants. The stock pays no return.

The New York Connecting Railroad Company capital stock, the entire issue, is held in equal parts by the carrier and The Pennsylvania Railroad Company. On date of valuation the property represented is not in operation, being in course of building, so there is no return from the investment of $1,527,204.33 in stock of the par value of $1,500,000.

Rutland Railroad Company capital stock, in amount 23,520½ shares, of the par value of $2,352,050, is carried in the carrier's accounts at its cost, $2,364,977.15, or $100.55 for each share. This stock was purchased for cash from the New York Central & Hudson River Railroad Company in 1911, but was not entered as an investment by the carrier at that time. It was immediately delivered to the New England Navigation Company for the latter's note, which was recorded as received for cash. In 1913 the Rutland Railroad Company stock, with other considerations, including stock of the carrier of the book value of $36,688,023.95, all amounting to $40,000,000, was returned to the carrier in exchange for the entire capital stock of The Connecticut Company, which was in the carrier's accounts at its par value, $40,000,000. The Rutland Railroad Company paid no dividend on its stock held by the carrier, in the fiscal year 1915. The Rutland Railroad Company stock held by the carrier, with that held by The New York Central Railroad Company, 23,417½ shares, is more than half of the

total issued. The carrier held the Rutland Railroad Company's note for $150,000 bearing interest at 6 per cent per annum.

Rhode Island Company stock, the complete issue, is held by the carrier. The Rhode Island Company owns electric railways in Rhode Island. The investment is fully described in this commission's reports in 27 I. C. C. 560, and 31 I. C. C. 32. The par value of the stock is $9,635,500 and the book value $24,352,336.41, or $251.43 for each $100 share. This stock paid no dividends in the fiscal year 1915. The carrier also holds notes of the Rhode Island Company to the amount of $3,230,100, representing cash advanced, upon which the interest for the year was $199,617.50, but nothing was paid on that account.

The New York, Westchester and Boston Railroad Company investment and the circumstances attending the acquisition thereof are described in our reports 27 I. C. C. 560, and 31 I. C. C. 32. The carrier holds capital stock of the par value of $4,924,937.50, being 49,249 shares at $100 each, and $37.50 in scrip. This is more than 98 per cent of the total stock outstanding. The book value is $6,241,951.76, which is at $126.74 for each share. The stock has paid no dividends. The whole cost of the stock was paid substantially in cash, principally through the Millbrook Company. Cash advanced to that company upon its notes was repaid by the delivery of this stock and other securities. The total charged as the cost of the stock, however, includes $285,000
paid in cash to Marsden Perry and Oakleigh Thorne
110 in consideration of the cancellation of a contract and
$36,857.14 representing a part of the carrier's loss on the sale of New York, Westchester and Boston Railroad Company's bonds. The first of the payments for this stock was made in 1909, other payments continued through 1912. First-mortgage 50-year 5 per cent bonds, dated October 1, 1904, issued by the New York, Westchester and Boston Railroad Company, were acquired in 1910 to the par value of $16,300,000. These were recorded as having cost par and were paid for principally by credits to the Millbrook Company. The issuing company was reorganized as the New York, Westchester and Boston Railroad Company in 1910 and these bonds were exchanged at par for first-mortgage 4½ per cent bonds due in 1946. Additional bonds of the later issue were acquired as repayment of advances to the Millbrook Company or to the New York, Westchester and

Boston Railroad Company until the total par value held was $21,390,000. Of this amount, $19,200,000 was sold, $17,200,000 at 94, less 1½ per cent commission, and $2,000,000 for 97.5 per cent flat, leaving the amount held $2,190,000. The total loss was $1,340,000, which was charged; $36,857.14 as part of the cost of the New York, Westchester and Boston Railroad Company stock acquired, $37,847.24 to income as amortization of discount on funded debt, and the remainder, $1,265,295.62, to profit and loss. The carrier's liability as guarantor of the principal and interest of these bonds is shown in the section on contingent liabilities in the chapter on results of corporate operations. The carrier has advanced in open account to the New York, Westchester and Boston Railroad Company $2,764,775 in cash, which has been written off as not likely to be paid. The account is of record at the nominal sum of $1 in the account called Advances, under investments in affiliated companies, on the balance sheet. The carrier also holds notes of the New York, Westchester and Boston Railroad Company to the amount of $5,478,751, bearing 5 and 6 per cent interest, given for cash advanced. No return was received in the fiscal year 1915 on any part of the investment represented by the stock, bonds, advances, and notes just described. The total book value, including the amount of advances named, is $16,675,477.76. The accrued interest for the year not paid was $1,368,065.35.

Millbrook Company capital stock of the par value of $100,000, the entire issue, was recorded as bought at par for cash on December 31, 1907. Subsequent adjustments of the account for advances resulted in an increase of the book value of the stock to $109,500. This amount was reduced to the par of the stock before date of valuation by a charge to profit and loss. The Millbrook Company came into existence as one of the corporations which were concerned in the building of the New York, Westchester and Boston Railroad Company. It holds real estate, partly improved and partly unimproved, in the northern part of New York City and in the neighboring suburban towns, said to be of the book value of $3,980,000. The greater part of the funds with which the carrier's interest in the New York, Westchester and Boston Railroad Company was secured, was advanced to or through the Millbrook Company. These advances were repaid in part by delivery of the securities of the carrier and in part by the issue of capital stock and

notes of the Millbrook Company. The carrier received notes of the Millbrook Company in further settlement of the advances made, of which it held on date of valuation $2,278,241.21. No return of interest or dividends was received on this investment in the fiscal year 1915. The interest accrued to the credit of the carrier but not paid, for the year, was $176,880.63.

Trolley-line properties owned by the Berkshire Street Railway Company, The Vermont Company, Stamford Street Railway Company, and The Westchester Street Railroad Company are controlled by the carrier through ownership of the complete issues of capital stock. The property of The Vermont Company is operated by the Berkshire Street Railway Company. The stock of the Berkshire Street Railway Company was acquired by The Consolidated Railway Company in 1905, but later in the same year it was transferred to the New England Investment and Security Company when opposition to the Consolidated Railway Company's investment arose in Massachusetts. In 1910 the carrier secured the enactment of legislation in Massachusetts which enabled it to resume this investment. As the New England Investment and Security Company was controlled by the carrier, the transfer was effected. The Bennington and North Adams Street Railway Company became The Vermont Company by change of name. It acquired the property of the Bennington and Hoosick Valley Railway Company, but later that property was conveyed to a new company, the Hoosick Falls Railroad, for $100,000 of the capital stock of the latter. This property is leased to The Vermont Company and by it subleased to the Berkshire Street Railway Company. The stock of the Bennington and North Adams Street Railway Company went through the same process as that of the Berkshire Street Railway Company. It was transferred to the New England Investment and Security Company and in 1910 reconveyed to the carrier.

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The property of the Stamford Street Railway Company was acquired in 1904 by The Consolidated Railway Company, which issued its 4 per cent 50-year debentures for the stock at the rate of $125 per share. The investment came to the carrier in the merger of 1907. The Westchester Street Railroad Company was formerly the Tarrytown, White Plains and Mamaroneck Railroad Company,

which was sold under foreclosure. The property was bought in for the carrier and reorganized under its present name about December 1, 1909.

The par value of the four issues of stocks of the above properties is $7,248,100 and the book value, substantially the cost to the carrier, $8,458,986.82. No return was received on this investment in the fiscal year 1915. The carrier also holds bonds of those companies, of the par value of $1,946,000, which cost $1,868,380. Bonds of the par and book value of $422,000 made no return in the fiscal year 1915. The Stamford Street Railway Company paid $5,120 to apply on $27,120 interest on $678,000 of its 4 per cent bonds; The Vermont Company paid 5 per cent on $846,000 par of its bonds. The carrier holds notes of the Berkshire Street Railway Company in the amount of $3,364,760.45, of the Stamford Street Railway Company in the amount of $189,872.08, and of the Westchester Street Railway Company in the amount of $88,643.30. The Berkshire Street Railway Company failed to pay the total interest accrued on the notes by $118,000 and the Westchester Street Railroad Company by $14,855.38. Of this total investment in stocks, bonds and notes, amounting to $13,970,642.65, the return was $152,722.29, or slightly more than 1 per cent.

Public-utility properties owned by the Waterbury Gas Light Company, Watertown Gas Company, and Westport Water Company are controlled by the carrier. Waterbury Gas Company stock, 21,472 shares, was acquired at or near the expiration of the lease in 1914. The leasehold interest was acquired by the carrier as a result of the merger with The Consolidated Railway Company. This stock, par value $25 per share, was acquired for $1,174,027.86 in cash, or for about $54.87 per share. The carrier controls 15,554 additional shares held by the Housatonic Power Company. These holdings together are over 92 per cent of the total stock issued by the Waterbury Gas Company. The stock paid 8 per cent in 1915, or about 3.66 per cent upon the book value. The entire issue of capital stock of the Watertown Gas Company, par value $50,000, book value
112 $50,000, is held by the Housatonic Power Company, which is, in turn, controlled by the carrier. Also, the entire issue of capital stock of the Westport Water Company, par value $175,000, book value $25,000, together with short-term notes of $67,500, are held by the Housatonic Power Company.

The New England Navigation Company investment was originally made when the carrier paid $50,000 cash for all of the stock of the Colonial Commercial Company and $2,000 in connection with securing its charter. In June, 1904, the name was changed to New England Navigation Company and these two amounts were entered as the cost of the stock of the latter. Advances in cash were made to the New England Navigation Company to the amount of $31,964,422.30, and $21,826,254.09 was repaid in cash. Securities of the carrier and other companies were exchanged, so that on date of valuation the carrier's book investment in the New England Navigation Company's stock was $53,322,899.48, represented by 494,055 shares of stock, the whole amount issued, of the par value of $49,405,500. No return was received from this stock in the fiscal year 1915. The New England Navigation Company held the carrier's interest in the Merchants and Miners Transportation Company, which operated steamships between Boston and Baltimore and other Atlantic ports. Upon disposal of this interest in 1914 there was a loss of $3,594,000. The carrier thereupon surrendered the stock of the New England Navigation Company to that amount, reduced its book investment in that company and charged the loss to its profit and loss account. The carrier holds the New England Navigation Company's notes for $3,904,808.40. The interest on these notes accrued to the credit of the carrier in the fiscal year 1915 was $191,322.24, of which $55,322.24 was paid. The carrier's total investment in stock and notes of the New England Navigation Company, on date of valuation, aggregated $57,227,707.52, consisting of all of the capital stock, 494,055 shares, par value $49,405,500, acquired at a book value of $53,322,899.48, and short-term notes bearing respectively 4½, 5, and 6 per cent interest, face value $3,904,808.04. In addition to the above obligations, the New England Navigation Company has outstanding funded debt to an amount of $24,290,000 par value, consisting of $15,000 of 6 per cent mortgage bonds assumed, $4,275,000 of 4 per cent 50-year debentures, and $20,000,000 of 6 per cent 3-year collateral notes.

The investments of the New England Navigation Company are as follows:

Security.	Par value.	Book value.
Boston Chamber of Commerce, capital stock	.....	$200.00
The Connecticut Company, capital stock	$40,000,000.00	40,000,000.00
Eastern Steamship Corporation, capital stock	2,000,000.00	1,762,500.00
Eastern Steamship Corporation, first-mortgage 5 per cent bonds	2,500,000.00	2,437,500.00
The Hartford & New York Transportation Company, capital stock	2,500,000.00	2,538,916.78
Housatonic Power Company, capital stock	3,000,000.00	2,985,978.45
The Narragansett Pier Railroad Company, capital stock	18,700.00	18,700.00
The Naugatuck Railroad Company, first-mortgage 4 per cent bonds	1,000.00	1,000.00
New Bedford, Martha's Vineyard and Nantucket Steamboat Company, capital stock	141,700.00	141,700.00
New England Investment and Security Company funding notes due 1924 at 3–4–5 per cent	13,709,000.00	13,631,750.00
The New England Steamship Company, capital stock	5,812,400.00	3,100,000.00
The New England Steamship Company, first-mortgage 5 per cent bonds	9,000,000.00	9,000,000.00
New Haven and Derby Railroad Company, mortgage bonds at 5 per cent	1,000.00	1,050.00
Providence & Danielson Railway Company, capital stock	913,200.00	182,640.00
Providence & Danielson Railway Company, first-mortgage 5 per cent bonds	600,000.00	433,843.03
Sea View Railroad Company, capital stock	700,000.00	65,197.44
Sea View Railroad Company, first-mortgage 5 per cent bonds	600,000.00	584,698.90
Shore Line Electric Railroad Company of New York, capital stock rights	117,000.00	117,000.00
The Worcester and Connecticut Eastern Railway Company, first-mortgage 4½ per cent bonds	32,000.00	32,744.00
Total	81,646,000.00	77,036,418.60

113 The property of the Connecticut Company is shown in detail in the chapter on corporate financing to be trolley lines in Connecticut. The property of the New England Investment and Security Company is principally trolley lines in central Massachusetts.

Status of holdings on date of valuation.—The investment holdings of the carrier on date of valuation may be classified as follows:

Boston and Maine Railroad leased road's stocks	$1,417,216.95	
Boston Railroad Holding Company's stock	27,600,400.00	
Investment in Boston and Maine Railroad properties (Held by trustees under decree of United States court.)		$29,017,616.95
Carrier's leased roads stock (Pledged on 1-year notes.)	$31,444,196.21	
Carrier's leased roads bonds	14,270,027.50	

(Pledged on 1-year notes.)		
Railroad company, stocks	14,577,495.29	
Railroad company, bonds	2,287,388.50	
Railroad company, notes	21,805,430.01	
Railroad company, advances	1,642,671.63	
Investment in railroads		86,027,209.14
Rhode Island Company stock	24,352,336.41	
(Held by trustees under decree of United States court.)		
Trolley lines, stocks	8,458,986.82	
Other companies, stocks	54,602,886.61	
Trolley lines, bonds	1,908,280.00	
Trolley lines, notes	8,898,276.83	
Investment in trolley lines, water transportation, and public utilities		98,220,766.67
Other bonds	$320,000.00	
Other companies and individuals' notes	7,811,943.30	
Construction advances Grand Central Terminal	6,001,794.12	
Other investments		14,133,737.42
Total book value		227,399,330.18

The item of "other companies, stocks" represents largely holdings of The Connecticut Company in trolley lines in Connecticut and holdings of the New England Investment and Security Company in trolley lines in central Massachusetts, all of which entail through the investment of the New England Navigation Company. The investments of the New England Navigation Company include public utility property owned by the Housatonic Power Company and considerable water-transportation property as well.

Securities held under order of the Federal court.—A petition filed by the Attorney General of the United States in the District Court of the United States for the Southern District of New York on July 23, 1914, sought to compel a separation of the carrier interest in various trolley and steamship properties and in the Boston and Maine Railroad. The last named was controlled through the Boston Railroad Holding Company and the carrier also held directly an interest in 16 of the Boston and Maine Railroad's leased roads. The carrier made answer on September 17, 1914, and on October 17, 1914, an agreed decree was entered by the court.

114 The decree provided for the transfer of the carrier interest in the Boston Railroad Holding Company and the Boston and Maine Railroad is leased roads to a board of trustees who were to exercise all of the rights of ownership, except the right to sell the stock. The trustees

were directed to endeavor to make sale of the Boston and Maine stock and the stocks of the leased roads before January 1, 1917, but under conditions which required the assent of the carrier or a further order of the court. These stocks are in the carrier's balance sheet at a book value of $29,017,616.95.

The New England Navigation Company's holdings of $40,000,000 of the capital stock of The Connecticut Company, which owned the Connecticut trolleys, was required to be transferred to trustees named who were to manage the property and make an effort to sell the shares before July 1, 1919.

The carrier's interest in the stock of The Rhode Island Company, having a book value of $24,352,336.41, and the New England Navigation Company's holdings of stock and bonds of the Providence & Danielson Railway Company and the Sea View Railroad Company, all trolley lines, of a book value of $1,266,379.37, were transferred to a board of trustees who were to manage the properties and endeavor to sell the securities before July 1, 1919.

The New England Navigation Company was required to sell its holdings of the stock and bonds of the Eastern Steamship Corporation of a par value of $4,200,000 by July 1, 1917, and its interest in the Shore Line Electric Railroad Company of New York (an inactive property), $117,000, and in the New England Investment and Security Company (controlling trolley lines in central Massachusetts), $15,631,750, by July 1, 1919.

The carrier was required to sell by July 1, 1919, its holdings of $9,936,156.03 of the Berkshire Street Railway Company, of $1,417,664.31 of The Vermont Company, of $1,400,395.48 of the New York and Stamford Railway Company, and of $1,216,426.83 of The Westchester Street Railroad Company securities.

The dates set for the sale of the various lots of securities are subject to change by application to the court and the terms of sale are subject to the approval of the carrier. The decree provides that the securities affected by it shall not be sold to the stockholders of the carrier as a class, or the carrier, or to any person or corporation acting for the carrier. The intent of the decree is to disperse the control of these properties and to prevent a renewal of such control by the carrier or in its interest.

The effect of the decree has been to deprive the carrier of the authority to manage or to sell, except under the conditions described, the securities named, which are of the combined book value of $121,806,666.02. This is the amount on date of valuation and does not include some notes and open accounts with various companies.

The Boston & Albany Railroad Company is held by The New York Central Railroad Company under a 99-year lease which became effective July 1, 1900. On July 1, 1911, the carrier, by agreement with the lessee named, became entitled to share equally with the lessee in the results of the operation of the leased road. This agreement, as it affected the carrier, was canceled January 31, 1914. The decree of the court perpetually enjoined the carrier for- renewing the agreement or from entering into one of similar effect. This arrangement was in force two years and seven months and the carrier's loss under the agreement, according to its books, was $240,351.36. There was an additional loss to the carrier arising from its contribution of $750,000 to a working fund for use on the leased road and from its participation, with the lessee, in an equipment trust to the amount of $668,391.28. These principal amounts
115 were returned to the carrier, but no allowance of interest was made for the time the lessee had the use or benefit of these funds.

The carrier held, through the New England Navigation Company, stock of the Merchants & Miners Transportation Company which cost approximately $5,774,500. Before the agreed decree was entered by the court this interest was disposed of at a loss of $3,594,500. Thereupon the carrier surrendered 35,945 shares of stock in the New England Navigation Company, equal in par value to the latter company's loss on the securities sold, and charged that sum to its profit and loss account. The decree, reciting the sale of the interest in the Merchants & Miners Transportation Company, forever enjoined the carrier from renewing that interest. The following is a list of the securities held by trustees under the terms of the order.

	Shares.	Par value.	Book value
Boston and Lowell Railroad Corporation	412	$41,200.00	$88,775.13
The Concord & Montreal Railroad, common	1,021	102,100.00	162,458.52
The Concord & Montreal Railroad, preferred	1,448	144,800.00	233,307.18
Concord and Portsmouth Railroad	18	1,800.00	3,285.00
Connecticut River Railroad Company	1,015	101,500.00	276,220.04
Hereford Railroad Company	246	24,600.00	21,928.77
Lowell and Andover Railroad Company	193	19,300.00	41,919.26
Manchester and Lawrence Railroad	63	6,300.00	14,081.66
Massawippi Valley Railway Company	354	35,400.00	46,020.00
Nashua and Lowell Railroad Corporation	84	8,400.00	20,170.51
Northern Railroad of New Hampshire	922	92,200.00	130,750.27
The Connecticut and Passumpsic Rivers Rail Road Company	1,464	146,400.00	208,162.44
Pemigewasset Valley Railroad	710	71,000.00	99,676.51
Peterborough Railroad	86	8,600.00	8,390.00
Upper Coos Railroad	73	7,300.00	10,242.75
Vermont and Massachusetts Rail-road Company	184	18,400.00	30,439.77
Wilton Railroad Company	98	9,800.00	21,389.14
Boston Railroad Holding Company, common	31,065	3,106,500.00	3,106,500.00
Boston Railroad Holding Company, preferred	244,939	24,493,900.00	24,493,900.00
Total	284,395	28,439,500.00	29,017,616.95

The Rhode Island Company holdings, consisting of 96,855 shares of stock, par value $9,658,500, with a book value of $24,493,900, were held by trustees under decree of United States Court.

Securities pledged as collateral.—The following securities, book value $45,714,223.71, are pledged as collateral to an issue of 1-year 5 per cent collateral notes, dated May 1, 1915, face value $27,000,000:

	Shares.	Par value.	Book value.
Boston and Providence, capital stock	5,246	$524,600.00	$1,582,443.18
New York, Ontario and Western Railway Company, common	291,600	29,160,000.00	13,105,185.62
New York, Ontario and Western Railway Company, preferred	22	2,200.00	3,212.00
Norwich and Worcester, stock	971	97,100.00	219,038.19
Old Colony Railroad, stock	98,132	9,813,200.00	13,065,341.80
Providence, Warren and Bristol, common	4,867	486,700.00	730,212.67
Providence and Worcester	9,551	955,100.00	2,738,762.75
Total stock	410,389	41,038,900.00	31,444,196.21
Central New England Railway Company, first-mortgage 4 per cent 50-year bonds, dated Jan. 1, 1911	.....	1,500,000.00	1,270,027.50
Harlem River and Port Chester, 15-year 5 per cent debentures, dated May 1, 1915	.....	13,000,000.00	13,000,000.00
Total funded debt	.....	14,500,000.00	14,270,027.50
Total pledged	.....	55,538,900.00	45,714,223.71

116 *Securities acquired and disposed of.*—In addition to the securities held on date of valuation, the carrier acquired and disposed of stocks and bonds of other companies of the total par value of $410,600,101.91, and a book value of $370,453,286.45. The considerations passed in these transactions were as follows:

Given in acquisition.	Consideration.	Received at disposal.
$68,171,227.02	Cash	$60,095,761.18
187,995,905.12	Other securities	217,495,390.32
52,527,277.32	Property	32,705,308.12
6,953,112.23	Acquired with merged roads	.....
50,884,737.56	Other considerations	62,573,186.09
3,921,027.20	Profit and loss, credit	.....
	Total received at disposal	372,869,645.71
	Profit and loss, credit	2,416,359.26
370,453,286.45	Total given in acquisition	370,453,286.45

These amounts do not accurately represent the volume of the trading in securities as the same lot of stock or bonds was frequently passed through the carrier's accounts more than once and many transactions in which the carrier was interested, if not engaged, do not appear upon its books. The stock of The Connecticut Company, $40,000,000, was acquired by the carrier by the surrender of physical property, the Connecticut trolleys, and was traded to the New England Navigation Company for other securities and cash. The stock of the Rutland Railroad Company, book value $2,364,977.15, was purchased from The New York Central Railroad Company and traded to the New England Navigation Company without appearing in the carrier's books. The same stock came back to the carrier in another exchange of securities with the New England Navigation Company. These are merely illustrative instances. The transactions were principally with the carrier's controlled companies.

Return on the investment.—The lease of the Old Colony Railroad and the property of several other companies became effective about the beginning of the fiscal year 1894. In that year the net income decreased $624,320.94, and the dividend requirement, through increase in capital stock, increased $685,757.50. In the following year the dividend rate was reduced to 8 per cent, and so remained to 1913. In the last month of the fiscal year 1907 the trolley debt was assumed and in 1908 the net income decreased $3,924,-

916.66, while the amount needed for the usual dividend was increased $809,638. The carrier did not recover its previously normal condition after the merger of 1907, by which it acquired the Connecticut trolleys and other properties.

At date of valuation the investment of the carrier in other companies failed in large measure to pay dividends. Of the total book value of investment, $227,399,330.18, about $139,000,000 produced no return and the remainder, about $88,000,000, yielded on the average 2.86 per cent in 1915. In addition, advances to the New York, Westchester and Boston Railroad Company amounting to $2,764,775 had been written down to $1 and advances to the Boston Railroad Holding Company of $2,336,215.67 had been written down to $2. The average interest on the carrier's own funded debt for the year 1915 was about 4.38 per cent. The bond carrying charge at this rate for the book value of the carrier's investment would be about ten million dollars per annum. The actual return on the carrier's investment in other companies being about two and a half mil-
117 lion dollars per annum with such carrying charge would create an adverse obligation on the carrier's income of something like seven and a half million dollars per year, reducing the amount available for dividends on the carrier's capital stock by an equal amount. In addition to the above certain contingent liabilities assumed along with its investment place an additional financial burden on the carrier. In 1913 its guarantee of interest on the bonds of the New York, Westchester and Boston Railroad Company and the dividends on the preferred stock of the Boston Railroad Holding Company showed in the income account. These guarantees cost the carrier in three years $4,259,345.99, as follows:

Year.	New York, Westchester and Boston Railroad Company bonds.	Boston Railroad Holding Company stock.	Total
1913	$777,750.00	$503,268.49	$1,281,018.49
1914	864,000.00	1,118,756.00	1,982,756.00
1915	864,000.00	131,571.50	995,571.50
Total	2,505,750.00	1,753,595.99	4,259,345.99

If these contingent guarantee obligations are included in the accounting of net dividends for investment, the car-

rier's adverse obligation for the year ended on date of valuation should be increased by nearly a million dollars.

Still further in addition, this dividend accounting would not be complete without the amortization of $5,100,990.67 which has been written off.

Aids, Gifts, Grants, and Donations

The carrier returns in addition to lands, hereinbefore mentioned, a passenger station in the town of Millis, Mass., received as an aid. The estimated cost of such station is $4,000. The articles of indenture provided that in consideration of $600, for the purchase of a tract of land in the town of Millis the grantors agreed to erect upon the land a building, the lower story to be devoted to railroad purposes, and the upper story for the purposes of a public library and offices for the town officers.

The predecessors of the carrier received assistance of various kinds, described in such detail as is possible, which would result as aids in the construction of railroad property.

The Connecticut Valley Railroad Company received subscriptions to its capital stock which were paid in cash at par from various cities and towns in Connecticut, amounting in all to $834,578, detailed as follows:

	$500,000
Hartford	19,078
Rocky Hill	28,300
Cromwell	150,000
Middletown	40,000
Haddam	48,000
Essex	16,700
Chester	32,500
Saybrook	

The New York, Providence and Boston Railroad Company, in the year 1839, failed to pay a debt secured by mortgage. Trustees took possession of the property and thereafter, some time before December 10, 1843, the holders of evidence of debt of the par value of $1,197,543.68 surrendered their holdings for $600,355.62, composed of cash, $21,355.62, and new bonds, $579,000. The difference, which represented the apparent loss to the creditors, was $597,188.06. It is not possible to say to what extent the company profited by this transaction.

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The Housatonic Railroad Company had the right, under legislative authority, to issue "bills and post notes" so

called. The bills were in denominations of $1, $2, $3, $5, and $10 and the post notes, $100, $500, and $1,000. These evidences of debt were issued under supervision of commissioners representing the State and thus had substantially the State's endorsement. They were issued to the total amount of $448,625 for cash or its equivalent, at par, and were so retired by the Housatonic Railroad Company.

The Providence and Springfield Railroad Company issued capital stock to the par value of $50,000 to the town of Burrillville, R. I., in exchange for a like amount of the town's bonds. The town bonds were sold, $49,000 par value for $44,010 in cash, and $1,000 was exchanged for land.

The New Haven and Derby Railroad Company on February 1, 1870, placed an issue of 30-year 7 per cent mortgage bonds, which were guaranteed by the city of New Haven, Conn. The city paid the interest on these bonds for 13 years, amounting to $204,750. It loaned the railroad $132,875, of which $82,875 was repaid, leaving a balance of $50,000. The city expended for account of the railroad company $614.15. Interest was charged to the amount of $224,635.85, making the total advances of the city $480,000. The New Haven and Derby Railroad Company issued 5 per cent mortgage certificates for this amount in payment of its debt, which were assumed and paid by the carrier.

The Boston, Hartford and Erie Railroad Company received from the State of Massachusetts $3,599,024 par value of 5 per cent scrip certificates and gave as security for the redemption of them $3,600,000 of 7 per cent bonds. The State scrip was sold for $3,925,734.41. The State exchanged the $3,600,000 of railroad bonds for $500 cash and $1,737,000 bonds of the New York and New England Railroad Company, which was the successor of the Boston, Hartford and Erie Railroad Company. For the $1,737,000 of bonds the State realized par in the reorganization of The New England Railroad Company, so that its loss was $1,861,524.

The Windsor Locks and Suffield Railroad Company received a cash donation from the town of Suffield, Conn., amounting to $20,000. It does not appear that any concession was granted by the railroad company.

When the property of The Meriden, Waterbury and Con-

necticut River Railroad Company was leased to the New York and New England Railroad Company, it was stipulated that the lessor should be free of floating debt and that the funded debt should not exceed $450,000. To meet these conditions the creditors surrendered bonds and notes and their right to receive interest and other items due, all amounting to $1,070,042.26.

Leased Railway Property.

The carrier uses, on date of valuation, property owned by other companies and other companies use property owned by the carrier to the extent indicated in the following statement. The description of property, the period and terms of use, and the rentals accrued and charged or credited to income for the year ending on date of valuation are as follows:

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Solely used but not owned, leased from—

	Rentals.
Old Colony Railroad:	
The property of the Old Colony Railroad is leased to the carrier under date of Feb. 15, 1893, effective from Mar. 1, 1893. The property was operated separately until July 1, 1893, thereafter the results of its operations were included in the carrier's accounts. Under terms of the lease, equipment and personal property to the amount of $3,623,975.69, of which $3,161,518.83 represents equipment, was transferred to the carrier, for which sum it is liable to the lessor at the termination of the lease. Under the terms of the lease the rent, payable quarterly, is annually 7 per cent on the capital stock, interest on the debt and a reasonable amount for the maintenance of the lessor's organization. The lease provides also that all taxes and maintenance be paid by the lessee. Expenditures for additions and betterments by the lessor are repaid by the issue of securities by the lessor at the request of the lessee. At date of valuation $720,880.97 of such expenditures had been repaid. The carrier holds capital stock of the lessor to the par value of $9,813,200, with a book value of $13,065,341.80, amounting to 44 per cent of the total stock outstanding. The taxes were $560,464.62. For the year ended on date of valuation the rent paid was: $1,560,580, interest on capital stock; $539,070, interest on funded and unfunded debt; and $7,543.83 for maintenance of lessor's organization, aggregating	$2,107,193.83
Boston and Providence (Mass.):	
The complete property of the Boston and Providence (Mass.), including its interest in other corporations, was leased to the Old Colony Railroad under date of Apr. 7, 1888, effective from Apr. 1, 1888, for 99 years. Under terms of the lease of the Old Colony Railroad to the carrier under date of Feb. 15, 1893, effective from Mar. 1, 1893, the carrier assumed the obligation of the Old Colony Railroad of the above lease by the Boston and Providence (Mass.). The lessee is liable to the lessor at the termination of the lease for equipment taken to the	

Rentals.

amount of the agreed value of $871,234.35. The Old Colony Railroad made a payment of $1,300,000 for the lease of the Boston and Providence, which sum was distributed to the stockholders, amounting to 32½ per cent on the capital stock. The taxes for the year were $97,340.33. Under the terms of the lease the lessee is required to make all improvements at its own expense, such improvements to become and remain the property of the lessor. The lessee enjoys the benefit of the lessor's investments in the securities of other companies. If the securities are sold during the term of the lease it is provided that the lessee shall be liable to the lessor for the proceeds of the sale. The

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capital stock of the Boston and Providence (R. I.) is excepted from the provision for sale. The carrier holds $524,600 par value of the capital stock of the Boston and Providence (Mass.) out of a total issue of $3,996,000, which is carried at a book value of $1,582,443.18. Under the terms of lease the lessee pays as rent, payable quarterly, $400,000; interest on the funded debt; and not to exceed $5,000 to maintain the lessor's organization. For the year ended on date of valuation the payment was: Rent, $400,000; interest on funded debt, $86,800; and maintenance of organization, $3,000, aggregating..... 489,800.00

Boston and Providence (R. I.):

On June 3, 1835, the property of the Boston and Providence (R. I.) was leased to the Boston and Providence (Mass.) in perpetuity, under which the lessee agreed to maintain the property and pay all expenses arising from its use and occupation, and to pay as rental an amount equal to the rate of profit which may be annually divided by the Boston and Providence (Mass.) among the holders of its capital stock. The agreed value on which this payment was made was finally fixed at $150,000. Under the terms of the lease of the Boston and Providence (Mass.) to the carrier, its interests in this lease of the Boston and Providence (R. I.) are transferred to the carrier. Under charter provisions the Boston and Providence (Mass.) and the Boston and Providence (R. I.) are permitted to consolidate. The provisions of consolidation have never been carried out, but the returns to this commission are made as for a single property. Reference is made to the leased railway property chapter of the Boston and Providence (Mass.) for further details. The Boston and Providence owns jointly with the Providence and Worcester 4.970 miles of road, which is included under this lease. The Providence and Worcester's portion is also leased to the carrier.

Providence, Warren and Bristol:

The property of the Providence, Warren and Bristol was leased under date of Dec. 1, 1892, to the Old Colony Railroad Company effective from July 1, 1891, for 95 years and 9 months. Under the provision of the lease of the Old Colony Railroad to the carrier, the carrier assumed the rights and obligations under above lease as of the date of Mar. 1, 1893. The results of the operation of this property were not included in the carrier's accounts until July 1, 1893. Under the terms of the lease the lessee is liable to the lessor for an agreed value of $92,417 of equipment. The carrier owns $486,700 par value of the capital stock of the Providence, Warren and Bristol, with a book value of $730,432.67. Under the terms of the lease the rent, payable semiannually, is for an annual rate of 6

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per cent on the capital stock and the interest on the debt. The obligations and additions include the payment of taxes and the maintenance of the property. The rent for the year ended on date of valuation comprised 6 per cent on $874,600 of capital stock and 6 per cent on $352,397.30 of notes, aggregating 73,619.84

Harlem River and Port Chester:

The entire property of the Harlem River and Port Chester, a 6-track, standard-gage, electrically operated railroad, extending from New Rochelle, N. Y., on the carrier's New York division, to the Harlem River, was leased on Sept. 29, 1873, for a term of 99 years, with the privilege of renewal. Under the terms of the lease the lessee pays 7 per cent on the capital stock, interest on all indebtedness, principal of bonds when due, cost of maintenance, and all taxes and assessments. The carrier owns all of the stock of the lessee. The officers of the lessee are also officers or employees of the carrier. The total equipment of the lessee was transferred to the carrier under terms of the lease at an agreed value of $3,349,186.50, for which sum the lessee is liable to the lessor at the termination of the lease. While the lessee is bound under the lease to pay the principal of the debt when it falls due, there is no fund provided by current accounts to accomplish this. The carrier owns all of the stock, notes, and bonds outstanding, the rent is offset by corresponding credits in income, and there is no actual money payment. The taxes for the year were $345,526.07. The rent for 1915 comprised dividends at 7 per cent on $1,000,000 of capital stock, $70,000; interest at 4 per cent on $15,000,000 of notes, $600,000; 5 per cent for 2 months on $13,000,000 of 15-year bonds, $108,333.34; 5 per cent for 10 months on $10,000,000 of notes, $416,666.66; and 6 per cent for 10 months on $3,000,000 of notes, $150,000, aggregating 1,345,000.00

Holyoke and Westfield:

The carrier acquired lease of the property of the Holyoke and Westfield from the New Haven and Northampton Company (of 1862) when the carrier leased the property of that company. The original lease to the New Haven and Northampton Company (of 1862) dated from Oct. 26 1871. On Jan. 30, 1908, a new lease in perpetuity was made, to be effective from June 1, 1907. The carrier owns $20,000 par value of the capital stock of the lessor, upon which it received in 1915 a dividend of 14 per cent. The towns of Holyoke and Westfield hold 2,265 shares. The total issue is 2,600 shares. The lessee pays $46,000 a year in semi-annual payments as rent, maintains the property and pays taxes. Expenditures for additions and betterments are not recoverable. Taxes for the year ending on date of valuation were $12,100.20. The accrual on date of valuation was 46,000.00

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Providence and Worcester:

The entire property of the Providence and Worcester is leased to the carrier. This includes 4.970 miles of road which the Providence and Worcester owns jointly with the Boston and Providence. The portion owned by the Boston and Providence is also leased to the carrier. The original lease of this property was acquired by the carrier from the New York, Providence and Boston Railroad Company, on Apr. 1, 1892, when the property of the New York, Providence and Boston Railroad Company was leased to the carrier. The original lease of the Providence and Worces-

Rentals.

ter to the New York, Providence and Boston Railroad Company was dated May 1, 1888. A new lease dated Dec. 17, 1892, and effective from July 1, 1892, for 99 years, was executed. Under the terms of the lease the equipment and personal property was taken over by the carrier at an agreed valuation of $909,635.37, of which figure $828,887.40 represents equipment, for which first-named amount the lessee is liable to the lessor at the termination of the lease. Under the terms of the lease the lessee pays as rent, payable quarterly, each year, 10 per cent on the lessor's capital stock, interest on the bonded indebtedness, and $6,000 a year for maintenance of the organization of the lessor. The lessee is obligated to maintain the property, pay the taxes, and all other lawful charges. The taxes for the year were $123,135.88. Additions and betterments made to the leased property by the lessee become the property of the lessor without obligation of payment therefor. In the year ended on date of valuation the rent comprised $350,000 dividend on stock, $60,000 interest on debt, and $6,000 for maintenance of the organization, aggregating 416,000.00

Chatham Railroad:

The property of the Chatham Railroad from date of its completion was leased to the Old Colony Railroad, which lease was transferred to the carrier under terms of the lease of the Old Colony Railroad to the carrier. The property of the Chatham Railroad was operated under such lease until Mar. 15, 1911, when a new lease was made effective from Jan. 1, 1911, to run for 81 years 2 months. Under the terms of this lease the lessee pays annually as rent $5 per share of 682 shares of stock and $200 for maintenance of the organization of the lessor. The agreed annual rental is payable semi-annually. The lessee pays all taxes and maintains the road. The taxes for the year ended on date of valuation were $1,351.18. There is no provision for additions and betterments except that if expenditures for improvements are required by law the lessee shall have the option of surrendering the property. The total payment for the year ended on date of valuation was 3,610.00

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Norwich and Worcester:

The property of the Norwich and Worcester was originally leased Feb. 9, 1869, effective Feb. 1, 1869, to the Boston, Hartford and Erie Railroad Company, which was succeeded in turn by transfer by The New York and New England Railroad Company, The New England Railroad Company, and the carrier, the latter becoming the successor of the lessee July 1, 1888. The term of the lease is for 100 years. The rent was originally fixed at 10 per cent on the capital stock. When The New York and New England Railroad Company assumed the lease the rent was reduced on Apr. 26, 1886, to 8 per cent. On Dec. 31, 1897, after The New England Railroad Company had become the lessee, a further adjustment of the lease was made, and under the lease as maintained at that date the carrier now holds the property. The lessee pays 8 per cent on the capital stock, interest on all debt, and $2,500 per year for maintenance of the lessor's organization. The lessee also maintains the property and pays the taxes. The agreed rent is payable quarterly. The taxes for the year were $72,905.39. Expenditures for additions and betterments made by the lessee are repaid by the issue of securities by the lessor on the request of the lessee. On the date of valuation $820,729.04 of the amount so expended had not been pro-

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vided for by the issue of securities. The lessee is liable to the lessor at the termination of the lease for equipment and personal property taken to the amount of $630,620.32, of which $469,100 represents equipment. The carrier owns $97,100 par value of the lessor's capital stock, out of a total of $3,000,000. For the year ended on date of valuation the rent comprised $240,000 on capital stock, $48,000 on funded debt, and $22,500 for maintenance of organization, aggregating 290,500.00

The Connecticut Company:

On Dec. 19, 1906, The Connecticut Company leased all of its property to The Consolidated Railway Company for 99 years, effective from Aug. 1, 1906. The property consisted of approximately 193 miles of urban and interurban electric railways (trolleys) and other public-utility property. Under terms of the lease the lessee agreed to pay the taxes, maintain the property, and to pay as rent stated amounts beginning with $975,000 for the first year and increasing until the ninth year, when the rent became fixed at $1,400,000. On May 31, 1907, by merger, the carrier became the lessee. The property was divided, the electric railways going to The Connecticut Company and the remainder to the Housatonic Power Company for operation, as agents for the carrier. On Feb. 28, 1910, a sublease was made to the two agents, both being controlled by the carrier, and they became the lessees. By these subleases The Connecticut Company agreed to pay

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three-quarters of the rent due The Connecticut Company under the original lease and the Housatonic Power Company pays the remaining one-quarter. The taxes paid are similarly divided. The carrier charges its income as rent for leased roads with the total rent payable. The taxes are charged as railway tax accruals, and the sum of these amounts being the amount received by the carrier from the subleases is credited to income as income from leases of road. These items seem to have no proper place in the carrier's income accounts. The effect of the erroneous accounting in the year ended on date of valuation was to overcharge railway tax accruals $232,446.66 and rent for leased roads $1,397,334.67, which were the amounts for which the lessee was liable under the lease of Dec. 19, 1906. The accounting income from lease of road was overcredited by the sum of the amounts named, which was payable by the sublessees .....

Owned but not used, leased to—

Central New England Railway Company:

The carrier leases to the Central New England Railway Company a portion of its property, consisting of road from Danbury, Conn., to Hopewell, N. Y., and from Wicopee Junction to Beacon, N. Y., the trackage thereof amounting to 34.984 miles of first main track, 33.403 miles of second main track, and 22.070 miles of yard tracks and sidings, aggregating 90.457 miles of all tracks. Under this agreement these tracks were to be used jointly on the basis that the rent of the whole use of the property be at the rate of $10,000 per month. The payments to be made for this are the taxes and cost of maintenance and operation in proportion to the use by both companies. On date of valuation the Central New England Railway Company used the property solely and paid the full amount of the rent, including taxes, maintenance, and operating expenses. The accrual on date of valuation was 120,000.00

	Rentals.
Boston and Maine Railroad:	
The carrier leases for exclusive use to the Boston and Maine Railroad 0.176 mile of main track and 0.082 mile of yard tracks and sidings, aggregating 0.258 of a mile of all tracks at Easthampton, Mass. No rental is paid	
Wholly owned but jointly used, used with—	
New York, Westchester and Boston Railway:	
3.71 miles of road, Harlem River to One hundred and seventy-fourth Street, New York City, N. Y.; payment, proportion of fixed charges, maintenance, and operation on basis of car miles operated	59,405.94
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Shore Line Electric Railway Company of New York:	
16.08 miles of road, stations, etc., Tafts to Central Village, Conn.; payment, $6,050 per year; 1.5 cents per car-mile, wages of pilots, wages of one night man at Tafts, one night man at Jewett City, one night man at Central Village, and one-third of the wage of one day man at Central Village.	6,050.00
The Connecticut Company:	
6.90 miles of road, Meriden to Westfield, Conn.; basis of payment, proportion of maintenance, and renewals of bridges on the basis of the length of its use of the line to the total length of line	
3.54 miles of road, stations, etc., Westfield to Middletown, Conn.; basis of payment, 1.5 cents per car-mile, and additional expense due to its operation, including wages of pilots	
2.02 miles of road, stations, etc., Middletown to Cromwell, Conn.; basis of payment, 1.5 cents per car-mile, and additional expense due to its operations	
14.00 miles of road, stations, etc., East Hartford to Rockville, Conn.; basis of payment, 1.5 cents per car-mile, and additional expense due to its operations, including wages of pilots	
Boston and Maine Railroad:	
0.76 mile of road, Worcester to South Worcester, Mass.	
4.36 miles of road, exclusive use of westerly track from Concord Junction to North Acton, Mass.; on basis of payment for maintenance and 50 per cent of wages of crossing men and of maintenance and supplies at crossing cabins	3,082.20
Passenger station at Acton, Mass.; on basis of payment of 75 per cent of net operating expenses and fixed charges	2.49
Joint tracks at Springfield, Mass.; on basis of use of similar facilities furnished by the Boston and Maine Railroad at this point	
Yard for passenger equipment and tower at Southbridge Street, Worcester, Mass.; payment, proportion of expenses and fixed charges on basis of cars handled	2,840.61
Engine terminal at Worcester, Mass.; payment, proportion of expenses on basis of engines handled	
Passenger station at Easthampton, Mass.; on basis of rereceipt of 42.26 per cent of receipts and payment of 42.26 per cent of expenses on basis of passenger and freight business handled. The carrier credited $1,552.11 and charged $2,191.62 to joint-facility rents	
Driveway to station at Sterling Junction, Mass.; payment, rental on agreed value and proportion of cost of maintenance	7.05
Interchange tracks at Lowell, Mass.; payment, 76.58 per cent of maintenance and fixed charges	

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	Rentals.
Central of New England Railway Company:	
0.56 mile of road and passenger station, Hartford, Conn.; payment per year for access to and use of station	1,500.00
2.50 miles of road, Hartford to East Hartford, Conn.; on basis of use of road as means of access to East Hartford yards, with expense	.....
Passenger station at Danbury, Conn.; payment proportional to expenses and fixed charges on basis of ticket sales	.....
Freight house and yard at Danbury, Conn.; payment, proportion of expenses and fixed charges for freight house and office on basis of tonnage handled; for yard, on basis of cars handled	.....
Engine terminal at Danbury, Conn.; payment, proportion of expenses and fixed charges on basis of engines handled. Rental for all facilities at Danbury, Conn	9,326.64
Passenger station at Winsted, Conn.; payment, $3,173.93 yearly and 45 per cent of wages, maintenance, and supplies	2,380.44
Passenger station at Pine Meadow, Conn.; payment, 50 per cent of wages, maintenance, and supplies	.....
Passenger station at Simsbury, Conn.; payment, 40 per cent of maintenance and supplies	.....
Central Vermont Railway Company:	
Passenger station at Willimantic, Conn.; yearly payment	900.00
Engine terminal at Willimantic, Conn.; payment, $120 per year for water and 30 cents for each engine turned	120.00
Boston and Albany Railroad Company:	
Tower at B. and A. Crossing, Worcester, Mass., jointly used with the Boston and Albany Railroad Company, and Boston and Maine Railroad; no expense to tenant companies	.....
New York, Westchester and Boston Railroad Company:	
Interlocking station, West Farms Junction, New York City, N. Y.; payment, entire cost of maintenance and operation	.....
The Narragansett Pier Railroad Company:	
Passenger station at Kingston, R. I.; payment, $300 yearly and furnishes a small amount of labor for handling baggage at station	300.00
South Manchester Railroad Company:	
Passenger station at Manchester, Conn.; payment per annum of $250	250.00
Wood River Branch Railroad Company:	
Passenger and freight stations at Wood River Junction, R. I.; no expense to tenant company	.....

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The New England Steamship Company:	
North First Street Terminal, Brooklyn, N. Y.; payment, proportion of expenses on basis of tonnage handled	.....
Pier No. 70, East River, New York City, N. Y.; on basis of payment for its labor and wages of clerks during summer season	.....
Steamboat wharf, New Bedford, Mass.; payment, 17 per cent of wages of agent's clerks and of cost of lighting the office; 50 per cent of cost of lighting the wharf and of cost of handling through freight on a tonnage basis	.....
Steamboat wharf, Newport, R. I.; payment, 55 per cent of clerk hire and of cost of light and water for offices; 50 per cent of wages of other joint employees; proportion of cost of lighting wharf	.....
Fall River Line Pier, Fall River, Mass.; payment, 49 per cent of wages of agent's clerks, 2 per cent of water bills,	

	Rentals.
50 per cent of lighting bills, 50 per cent of cost of handling through freight on a tonnage basis, and the total cost of handling all rail freight on a tonnage basis	.....
Wharf at Norwich, Conn.; payment, portion of expenses for labor during summer months	.....
Jointly used but not owned, owned by—	
The New York Central Railroad Company:	
11.010 miles of first main track, 33.427 miles of second and other main tracks, 1.028 miles of yard tracks and sidings, aggregating 45.465 miles of all tracks, Woodlawn Junction to Fifty-ninth Street, New York, N. Y.; on basis of payment of a rate per passenger, depending on the number of passengers carried and the class of ticket; and dividing of 40 per cent of earnings on mail, express, and excess baggage on basis of mileage hauled	407,363.29
0.785 mile of first main track, 2.355 miles of second and other main tracks, and 24.033 miles of yard tracks and sidings, aggregating 27.173 miles of all tracks, at Grand Central Terminal, New York City, together with 13.973 miles of yard tracks and sidings at the Mott Haven yard; payment, proportion of all expenses, including fixed charges, on the basis of cars and locomotives entering the terminal. The carrier received $55,501.42 and paid $1,604,477.03, net amount paid being	1,548,975.61
The Boston Terminal Company:	
Boston and Albany Railroad Company:	
0.694 mile of first main track, 7.272 miles of second and other main tracks, 5.037 miles of yard tracks and sidings, aggregating 13.003 miles of all tracks, at Boston, Mass., of The Boston Terminal Company, together with passenger terminal of the Boston and Albany Railroad Company; payment, 75 per cent of all expenses, not including taxes	600,455.09
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20.78 miles of road, South Framingham to Boston, Mass.; payment, 30 cents per train-mile and 50 per cent of revenue from local traffic	16,101.11
0.76 mile of road, Springfield, Mass.; on basis of equal right to use of similar facilities furnished at Springfield by tenant company	.....
Cook Street passenger station, Newton Highlands, Mass.; payment per annum	600.00
Cook Street tower, Newton Highlands, Mass.; payment, 50 per cent of wages and supplies	462.50
Passenger station at Pittsfield, Mass.; payment, $2,500 per year rental, $420 for sale of tickets, $973.44 for handling baggage, $1,007.24 for telegraph service	2,000.01
Passenger station at Framingham, Mass.; payment $1,500 per annum; rental $1,125	1,125.00
Passenger and freight stations, State Line, Mass.; payment, of $60 per annum and 45 per cent of station expenses	60.00
Passenger station at Huntington Avenue and Trinity Place, Boston, Mass.; payment, $2,000 per annum	1,400.00
Passenger station at Westfield, Mass.; payment per annum, $4,000	4,000.00
Tower at Westfield, Mass.; payment, 33 1/3per cent of maintenance and cost of current; the carrier credited its joint-facility rent income with	3,008.00
Boston and Albany Railroad Company:	
Boston and Maine Railroad:	
Passenger station at Worcester, Mass.; on basis of proportion of receipts and expenses, 20 per cent of ticket sales and revenues	15,997.24

	Rentals.
Boston and Maine Railroad:	
4.59 miles of road, Shelburne Junction to Shelburne, Mass.; payment, $7,500 per annum	7,012.56
11.74 miles of road, Worcester to Sterling Junction, Mass.; payment, $25,000 per annum, 25 per cent of cost of maintenance, and 50 per cent of taxes	25,298.87
1.65 miles of road and freight yard at Worcester, Mass.; proportion of expenses and fixed charges on basis of cars entering the yard	.....
0.57 mile of road, Lowell to Lowell Junction, Mass.; proportion of receipts and expenses, 11.30 per cent, based on ticket sales	.....
Passenger station at Springfield, Mass.; payment, $22,500 per annum as rental and $1,311.36 for wages of operators	13,500.00
Engine terminal at Worcester, Mass.; proportion of expenses on engines handled	1,095.73
Tower at Worcester, Mass.; no expenses	.....
Tower at entrance of Millbrook, Worcester, Mass., no expenses	.....
At Lowell, Mass., passenger station and freight facilities, payment, 23.42 per cent of fixed charges, maintenance, and operations; for engine terminal, payment, proportion of expenses of engines handled; amount receivable, $889.36; amount payable, $963.15; net amount payable $73.79	75.79
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Passenger station at Fitchburg, Mass.; payment, proportion of expenses and receipts, 29.78 per cent, on basis of ticket sales	4,151.76
Passenger station at Sterling Junction, Mass.; payment, proportion to receipts and expenses, 29.32 per cent, on basis of passenger and freight business	423.35
Passenger and freight stations at Shelburne Falls, Mass.; payment, proportion of receipts and expenses, 26.24 per cent, on basis of passenger and freight business	248.08
Passenger and freight stations at Clinton, Mass.; payment, 52.625 per cent on basis of passenger and freight business; amount receivable, $2,164.91; amount payable, $7,774.99; net amount payable, $5,610.08	5,610.08
Passenger and freight stations at North Acton, Mass.; payment, proportion of receipts and expenses, 26.63 per cent, on basis of passenger and freight business handled; amount receivable, $2.38; amount payable, $54.38; net amount payable, $52	52.00
Passenger station at Northampton, Mass.; payment, proportion of receipts and expenses, 2.53 per cent, on basis of ticket sales	.....
Freight station and yards at Northampton, Mass.; payment, 31.32 per cent of all expenses on basis of business handled; amount receivable, $1,850.37; amount payable, $1,193.38; net amount receivable, $656.99	656.99
Central New England Railway Company:	
0.80 mile of road, Winsted, Conn.; considered equivalent to tracks furnished by tenant company	.....
Freight station, Beacon, N. Y.; payment, 25 per cent of costs of labor and supplies	.....
The New York Central Railroad Company:	
Woodlawn passenger station, New York City, N. Y.; payment, $420 per annum	243.60
Passenger station at One Hundred Twenty-fifth Street, New York City, N. Y.; proportion of $66,000 per annum on basis of number of trains stopped at station	10,690.14
The Connecticut Company:	
Overhead wiring and bonding, Meriden to Westfield, Conn.; payment, at rate of 15 cents per train-mile for freight movements and wages of pilots	.....

	Rentals.
The New England Steamship Company:	
Wharf at Wickford Landing, R. I.	.....
Pequonnock dock, Bridgeport, Conn.; payment, 15 per cent of wages of clerks and 25 per cent of assistant agent's salary, 50 per cent of wages of other joint employees, and 25 per cent of cost of lighting	.....
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Fox Point wharf at Providence, R. I.; payment, 29 per cent of wages of agent's clerks, 2 per cent of cost of water, 50 per cent of cost of handling through-freight, on a tonnage basis, and total cost of handling all rail freight, on a tonnage basis	.....
New London Line wharf, New London, Conn.; payment, 40 per cent of the wages of agent's clerks and one-half cost of handling through freight, on tonnage basis	.....
Belle dock, New Haven, Conn.; payment, 51 per cent of wages of clerks, light, and water for offices; 50 per cent of wages of other joint employees; current for light at rate of 5 cents per k. w. h.	.....
Minor facilities (included with wholly owned property), jointly owned and used with—	
Boston and Maine Railroad:	
Passenger and freight station at Concord Junction, Mass.; carrier owns 40 per cent of passenger station and 60 per cent of freight station; its proportion of receipts and expenses is 34.81 per cent; amount payable, $711.40; amount receivable, $1,558.71; net amount receivable, $847.31	$847.31
Yards at Concord Junction, Mass.; payment, 66 2/3 per cent of cost of maintenance	.....
Tower at Concord Junction, Mass.; carrier's share 50 per cent; payment, 40 per cent of expenses	.....
1.152 miles of all tracks, together with express building, cover sheds, inter-track fence, platforms, paving, and signs, Worcester, Mass.; carrier's share 66 2/3 per cent; revenue divided according to percentage of ownership; expenses based on number of tickets sold and amount of ticket revenue	.....
Passenger and freight stations at South Sudbury, Mass.; carrier's share 50 per cent; carrier's proportion of receipts and expenses is 24.08 per cent, on basis of packing and freight business	.....
Tower at Fitchburg, Mass.; carrier's share 50 per cent; expenses divided on percentage of ownership	.....
Central New England Railway Company:	
Interlocking tower at Simsbury, Conn.; carrier's share 50 per cent; owned jointly and used jointly	.....
Passenger station at Canaan, Conn.; carrier's share 50 per cent; payment, 37 per cent of employees' wages and 50 per cent of cost of supplies and maintenance	.....
Central Vermont Railway Company:	
Passenger station and grounds at Norwich, Conn.; carrier's share 50 per cent; used exclusively by the carrier	.....
Land, grading, fences, and crossings at Willimantic, Conn.; carrier's share 50 per cent	.....
Passenger station at New London, Conn. carrier's proportion 66 2/3 per cent; proportion of expenses based on number of tickets sold and ticket revenue. Rental	2,934.39
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The New York Central Railroad Company:	
Tower No. 20 at Framingham, Mass.; carrier's share 40.6 per cent; payment, 50 per cent of signalman's wages and 40.6 per cent of cost of oil	.....

	Rentals.
Tower at Westfield, Mass.; carrier's share 25 per cent; carrier pays 25 per cent of cost of maintenance	
Tower and plant, battery house and equipment, Woodlawn Junction, New York City, N. Y.; carrier's share 72 per cent; carrier pays 28 per cent of maintenance and expenses and 50 per cent of wages of operators	
The Rhode Island Company:	
Passenger station at Wickford, R. I.; carrier's share 50 per cent; expenses divided on percentage of ownership	
New York, Westchester and Boston Railroad Company:	
Footwalk and subway at Columbus Avenue, Mount Vernon, N. Y.; carrier's share 50 per cent	
Western Union Telegraph Company:	
Telegraph and telephone property: Under an agreement of an extensive character dated Sept. 14, 1896; none of the property owned by the telegraph company is included in this report	

Old Colony Railroad.

Corporate History.

The following chart shows the names of the corporations, the respective dates of incorporation, and for each predecessor, the date of succession, the immediately succeeding corporation, and the manner of succession. Reference to each of these corporations is made in the last column by its respective number shown in the first column.

No.	Name.	Incorporation.	Succession.
1	Old Colony Railroad Company	In Massachusetts, Mar. 17, 1872; in Rhode Island, May, 1872.	
2	Old Colony and Newport Railway Company	In Massachusetts, Apr. 25, 1862; in Rhode Island, May, 1860.	Consolidated with 15, to form 1, Sept. 30, 1872
3	Old Colony and Fall River Railroad Company.	In Massachusetts, Mar. 25, 1854.	United with 10, to form 2, Aug. 5, 1863.
4	Old Colony Railroad Corporation (of 1844).	In Massachusetts, Mar. 16, 1844.	Consolidated with 5, to form 3, Sept. 30, 1854.
5	Fall River Railroad Company (of 1846)	See 6	Consolidated with 4, to form 3, Sept. 30, 1854.
6	United Corporation of the Middleboro Railroad Corporation and Fall River Branch Railroad Company and Randolph and Bridgewater Railroad Corporation.	In Massachusetts, Mar. 26, 1845	Name changed to 5, Apr. 16, 1846.
7	Fall River Branch Railroad Company	In Massachusetts, Mar. 14, 1844	United with 8 and 9, to form 6, Mar. 26, 1845.
8	Randolph and Bridgewater Railroad Corporation.	In Massachusetts, Mar. 25, 1845	United with 7 and 9, to form 6, Mar. 26, 1845.
9	Middleboro Railroad Corporation	In Massachusetts, Mar. 26, 1845	United with 7 and 8 to form 6, Mar. 26, 1845.
10	The Newport and Fall River Railroad Company.	In Rhode Island, May 8, 1846	Consolidated with 3 to form 2, Aug. 5, 1863.
11	Dighton and Somerset Railroad Company	In Massachusetts, Feb. 21, 1863	Conveyed to 2, Dec. 31, 1865.
12	Granite Railway Company	In Massachusetts, Mar. 4, 1826	Trackage sold to 2, Dec. 19, 1870.
13	Easton Branch Railroad Company	In Massachusetts, Mar. 3, 1854	Merged with 2, Sept. 25, 1871.
14	Shawmut Railroad Company	In Massachusetts, June 22, 1870	Transferred to 2, Nov. 29, 1871.
15	Cape Cod Railroad Company	See 16	Consolidated with 2 to form 1, Sept. 30, 1872.
16	Cape Cod Branch Railroad Company	In Massachusetts, Apr. 8, 1846	Name changed to 15, Feb. 22, 1854.
17	Cape Cod Central Railroad Company	In Massachusetts, Mar. 28, 1861	Merged with 15, July 28, 1868.
18	Plymouth and Vineyard Sound Railroad Company	See 19	Acquired by 15, Sept. 9, 1871.
19	Vineyard Sound Railroad Company	In Massachusetts, date unknown	Name changed to —, Apr. 11, 1861.
20	Middleboro and Taunton Railroad Corporation	See 21	Conveyed to 1, Apr. 28, 1874.

No.	Name.	Incorporation	Succession.
21	Taunton and Middleboro Railroad Corporation	In Massachusetts, Apr. 21, 1848	Name changed to 20, Mar. 17, 1853.
22	South Shore Railroad Company	In Massachusetts, Mar. 26, 1846	Merged with 1, Mar. 31, 1877.
23	Duxbury and Cohassett Railroad Company.	In Massachusetts, Mar. 13, 1867	Merged with 1, May 22, 1878.
24	Boston, Clinton, Fitchburg and New Bedford Railroad Company.	In Massachusetts, Feb. 11, 1873	Merged with 1, Mar. 6, 1883.
25	Boston, Clinton and Fitchburg Railroad Company.	See 26	Consolidated with 30 to form 24, May 31, 1876.
26	Agricultural Branch Railroad Company	In Massachusetts, Apr. 26, 1847	Name changed to 25, Apr. 17, 1867.
27	Fitchburg and Worcester Railroad Company	In Massachusetts, Apr. 16, 1846	Merged with 25, June 30, 1869.
28	Mansfield and Framingham Railroad Company.	See 29	Merged with 25, May 31, 1875.
29	Foxboro Branch Railroad Corporation	In Massachusetts, Apr. 26, 1862	Name changed to 28, Mar. 18, 1867.
30	New Bedford Railroad Company	In Massachusetts, Feb. 11, 1873	Consolidated with 25 to form 24, May 31, 1876.
31	New Bedford and Taunton Railroad Corporation.	See 32	Deeded to 30, Mar. 20, 1873.
32	Old Colony Railroad Corporation (of 1838).	In Massachusetts, Apr. 13, 1838	Name changed to 31, Mar. 26, 1839.
33	Weir Branch Railroad Corporation	In Massachusetts, Apr. 16, 1847	Location used by 31, 1848.
34	Fairhaven Branch Railroad Company	In Massachusetts, May 1, 1849	Conveyed to 31, July 1, 1861.
35	Proprietors of the New Bedford and Fairhaven Ferry.	In Massachusetts, Mar. 8, 1832	Acquired by 34, Oct. 2, 1854.
36	Taunton Branch Railroad Company	In Massachusetts, Apr. 7, 1835	Merged with 30, Feb. 2, 1874.
37	Dorchester and Milton Branch Railroad Company.	In Massachusetts, Apr. 16, 1846	Merged with 1, Feb. 25, 1885.
38	Lowell and Framingham Railroad Company	In Massachusetts, Mar. 31, 1881	Merged with 1, Feb. 27, 1886.
39	Framingham and Lowell Railroad Company.	In Massachusetts, Mar. 23, 1870	Acquired by 38, Sept. 29, 1881.
40	Hanover Branch Railroad Company	In Massachusetts, Apr. 6, 1846, Apr. 20, 1864.	Merged with 1, June 30, 1887.
41	Fall River, Warren and Providence Railroad Company.	In Massachusetts, July 2, 1862; in Rhode Island, July 2, 1862.	Merged with 1, July 1, 1892.
42	The Warren and Fall River Railroad Company.	In Rhode Island, May 30, 1856	Consolidated with 43 to form 41, July 2, 1862.
43	The Fall River and Warren Railroad Company.	In Massachusetts, Mar. 17, 1857	Consolidated with 42 to form 41, July 2, 1862.

44	Fall River Railroad Company (of 1874)....	In Massachusetts, Nov. 19, 1874.....	Sold to 1, Nov. 12, 1896.
45	Nantasket Beach Railroad Company (of 1881).	In Massachusetts, Mar. 2, 1881.....	Conveyed to 1, Jan. 24, 1906.
46	Nantasket Beach Railroad Company (of 1880).	In Massachusetts, Mar. 2, 1880.....	Consolidated with 47 and 48 to form 45, Mar. 21, 1881.
47	The Hull and Nantasket Beach Railroad Company.	In Massachusetts, Sept. 2, 1880.....	Consolidated with 46 and 48 to form 45, Mar. 21, 1881.
48	Boston, Hingham and Hull Railroad Company.	In Massachusetts, Oct. 4, 1880.....	Consolidated with 46 and 47 to form 45, Mar. 21, 1881.
49	Plymouth and Middleboro Railroad Company.	In Massachusetts, Mar. 20, 1890.....	Conveyed to 1, Dec. 27, 1911.

Development of Fixed Physical Property.

The following tabulation shows the elements of trackage that go to make up the mileage of road owned by the Old Colony Railroad on date of valuation. All of the cities and towns mentioned are in Massachusetts unless otherwise indicated.

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Acquired by merger and purchase from—	Mileage.	
Old Colony and Newport Railway Company, Oct. 1, 1872—		
Constructed by that company, Montclair extension, date unknown	0.50	
Constructed by Old Colony Railroad Corporation (of 1844)—		
Boston to Plymouth, 1845	37.45	
Abington to Bridgewater, 1847	6.22	
Constructed by Fall River Railroad Company (of 1846), Braintree to Fall River, 1846	42.23	
Constructed by The Newport and Fall River Railroad Company, Newport, R. I., to Fall River, 1869	19.50	
Constructed by Dighton and Somerset Railroad Company, Braintree to Stoughton Junction and Easton to Fall River, 1866	33.20	
Constructed by Granite Railway Company, West River to Neponset River	1.80	
Constructed by Easton Branch Railroad Company, Stoughton Junction to Easton, 1855	2.50	
		143.40
Cape Cod Railroad Company, Oct. 1, 1872—		
Constructed by that company, Middleboro to Yarmouth and Orleans to Wellfleet, 1848-1872	56.25	
Constructed by Cape Cod Central Railroad Company, Yarmouth to Orleans, 1865	18.70	
		74.95
Middleboro and Taunton Railroad Corporation, Apr. 28, 1874; constructed by that company, Middleboro to Middleboro Junction, 1856		8.05
South Shore Railroad Company, Apr. 30, 1877; constructed by that company, Braintree to Cohasset, 1849		11.51
Duxbury and Cohasset Railroad Company, May 22, 1878, constructed by that company—		
Cohasset to South Duxbury, 1871	17.47	
South Duxbury to Kingston, 1874	3.20	
		20.67
Boston, Clinton, Fitchburg and New Bedford Railroad Company, Mar. 6, 1883—		
Constructed by Boston, Clinton and Fitchburg Railroad Company—		
Framingham to Northboro, 1855	12.30	
Northboro to Pratt Junction, 1866	13.95	
Reformatory to Sherborn, 1875	.70	
Marlboro Junction to Marlboro, 1855	1.47	
Clinton to Lancaster Mills, 1875	2.00	
Constructed by Fitchburg and Worcester Railroad Company, Fitchburg to Sterling Junction, 1850	13.73	
Constructed by Mansfield and Framingham Railroad Company, Mansfield to South Framingham, 1870	21.29	
Constructed by New Bedford Railroad Company, New Bedford extension, 1873	1.35	
Constructed by New Bedford and Taunton Railroad Corporation, New Bedford to Taunton, 1840	20.25	

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	Mileage
Constructed by Weir Branch Railroad Corporation (franchise), Weir Junction to Taunton, 1848	0.96
Constructed by Fairhaven Branch Railroad Company, Fairhaven to Tremont, 1854	14.95
Constructed by Taunton Branch Railroad Company—	
Taunton to Mansfield, 1836	10.95
Attleborough to Attleborough Junction, 1871	8.50
	122.40
Dorchester and Milton Branch Railroad Company, Feb. 27, 1885; constructed by that company, Neponset to Mattapan, 1847	3.23
Lowell and Framingham Railroad Company, Feb. 27, 1886; constructed by Framingham and Lowell Railroad Company, Framingham to Lowell, 1871	26.60
Hanover Branch Railroad Company, June 30, 1887; constructed by that company, North Abington to Hanover, 1868	7.85
Fall River, Warren and Providence Railroad Company, June 1, 1892; constructed by that company, Brayton, Mass., to Warren, R. I., 1865	6.65
Fall River Railroad Company (of 1874), Nov. 12, 1896; constructed by that company, Mt. Pleasant to Watuppa, 1875	11.69
Nantasket Beach Railroad Company (of 1881), Jan. 24, 1906—	
Constructed by Nantasket Beach Railroad Company (of 1880), Allerton to Nantasket Beach, 1880	3.10
Constructed by The Hull and Nantasket Beach Railroad Company, Allerton to Pemberton, 1881	3.00
Constructed by Boston, Hingham and Hull Railroad Company, Nantasket Beach to Nantasket Junction, 1881	.85
	6.95
Plymouth and Middleborough Railroad Company, Dec. 27, 1911, constructed by that company, Plymouth to Middleborough, 1892.	15.69
Total recorded mileage acquired	459.64

Acquired by construction:

	Mileage
Commenced by Old Colony and Newport Railway Company—	
Harrison Square to Shawmut Junction, 1872	2.91
West Quincy to Braintree, 1876	3.11
Commenced by Cape Cod Railroad Company—	
Buzzards Bay to Wood's Hole, 1872	17.28
Wellfleet to Provincetown, 1873	14.25
Constructed by Old Colony Railroad—	
Fall River to Slades Ferry, 1872	3.25
Whittenton Junction to Raynham, 1882	3.44
Elmwood to Westdale, 1885	.82
Matfield to Easton, 1888	6.95
Walpole Junction to North Attleborough, 1890	11.80
Walpole Junction to Norwood Junction, 1892	5.66
North Attleborough to Adamsdale, 1903	4.43
Total mileage constructed	73.90
Total recorded owned mileage	533.54

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Difference between total recorded mileage and mileage inventoried as of date of valuation	4.010
Mileage inventoriedas of date of valuation	529.530

History of Corporate Financing.

Capitalization.—The Old Colony Railroad has issued, assumed, and retired securities, leaving outstanding on date of valuation amounts as shown in the schedule following.

	Issued and assumed.	Retired.	Outstanding.
Common stock	$22,294,000		$22,294,000
Funded debt issued	20,394,000	$6,796,000	13,598,000
Funded debt assumed	7,110,400	7,110,200	200
Total	49,798,400	13,906,200	35,892,200

The recorded considerations received for the securities issued or assumed were as follows:

Par value issued or assumed.	Consideration.	Recorded value.
$32,679,380.00	Cash	$43,006,627.08
8,800,420.00	Capital stock of predecessors	8,800,420.00
698,000.00	Funded debt of predecessors	698,000.00
7,110,400.00	Bonds of predecessors assumed in acquisition of property	7,110,400.00
310,200.00	Investment securities	310,200.00
200,000.00	Notes payable retired	200,000.00
49,798,400.00	Total par value of securities.	
	Total recorded value	60,125,647.08
	Premium on capital stock:	
3,076,943.49	Credited to profit and loss.	
6,836,173.84	Credited to premiun on capital stock.	
	Premium on funded debt:	
212,481.67	Credited to profit and loss.	
199,528.08	Credited to premium on funded debt.	
3,430.00	Credited to investments in other securities.	
	Cost of engraving bonds, charged to profit and loss	1,310.00
60,126,957.08		60,126,957.08

The accounting records state that the $13,906,200 of securities retired were reacquired with a like amount of cash.

Funded debt.—The funded debt outstanding on date of valuation consists of the following issues:

50-year 4 per cent bonds, due Jan. 1, 1938	$4,000,000
30-year 4 per cent bonds, due Feb. 1, 1924	3,000,000
30-year 4 per cent bonds, due Dec. 1, 1925	5,598,000
30-year 3½ per cent bonds, due July 1, 1932	1,000,000
Assumed bond of Fitchburg and Worcester Railroad Company	200
Total	13,598,200

Short-term notes.—From date of incorporation to date of valuation the Old Colony Railroad issued or assumed notes to the amount of $27,627,354.59, of which $27,624,-

354.59 has been retired leaving outstanding on date
136 of valuation $3,000. The recorded considerations for which they were issued and retired are as follows:

Issued.	Consideration.	Retired.
$26,770,120.45	Cash	$27,224,354.59
264,998.00	Additions and betterments to road	
592,236.14	Property and assets (assumed)	
	Land	200,000.00
	Funded debt issued	200,000.00
	Total retired	27,624,354.59
	Outstanding	3,000.00
27,627,354.59	Total issued	27,627,354.59

Stock liability for conversion.—The Old Colony Railroad on date of valuation had a stock liability for conversion of the stock of its predecessors as follows:

Common stock outstanding.	Corporation.	Common stock to be issued.
$2,150	Boston, Clinton, Fitchburg and New Bedford Railroad Company	$905
3,200	Lowell and Framingham Railroad Company	160
600	Fall River Railroad Company (of 1874)	60
5,950	Total	1,125

Increase or decrease in securities in reorganization.—In the development of the property owned by the Old Colony Railroad there was a decrease of $3,777,829.58 in securities. Following is a statement showing the amount of securities of each company outstanding at the date of its demise, and the amount of securities issued by each successor in the reorganization.

	Outstanding at demise.	Issued and assumed by successor.
Old Colony and Newport Railway Company	$8,041,020.00	$8,041,020.00
Old Colony and Fall River Railroad Company	3,341,100.00	3,431,100.00
Old Colony Railroad Corporation (of 1844)	2,105,010.00	2,105,010.00
Fall River Railroad Company (of 1846)	1,050,000.00	1,050,000.00
Dighton and Somerset Railroad Company	850,000.00	850,000.00
Easton Branch Railroad Company	55,400.00	24,600.00
Cape Cod Railroad Company	1,417,742.65	1,587,300.00
Cape Cod Central Railroad Company	313,195.19	204,980.00
Middleborough and Taunton Railroad Corporation	148,300.00	
South Shore Railroad Company	775,000.00	275,500.00
Duxbury and Cohasset Railroad Company	390,000.00	
Boston, Clinton, Fitchburg and New Bedford Railroad Company	6,636,710.00	5,860,700.00
Boston, Clinton and Fitchburg Railroad Company	3,117,200.00	2,926,805.00
Fitchburg and Worcester Railroad Company	248,000.00	496,000.00
Mansfield and Framingham Railroad Company	870,000.00	745,000.00

	Outstanding at demise	Issued and assumed by successor.
New Bedford Railroad Company	2,250,000.00	2,341,405.00
New Bedford and Taunton Railroad Corporation.	671,500.00	995,968.95
Fairhaven Branch Railroad Company	232,157.00	.....
Taunton Branch Railroad Company	550,000.00	733,331.31
Dorchester and Milton Branch Railroad Company	100,440.00	.....
Lowell and Framingham Railroad Company	1,246,700.00	627,425.00
Framingham and Lowell Railroad Company	1,262,400.00	1,246,700.00
Hanover Branch Railroad Company	123,800.00	.....
Fall River, Warren and Providence Railroad Company	450,000.00	.....
Fall River Railroad Company (of 1874)	400,000.00	200,000.00
Nantasket Beach Railroad Company (of 1881)	500,000.00	.....
Plymouth and Middleborough Railroad Company	305,000.00	.....
Total	37,549,674.84	33,762,845.26

137 **Results of Corporate Operations.**

Income account.—The income account of the Old Colony Railroad for the period of sole operation October 1, 1872, to June 30, 1893, for the period of lease July 1, 1893, to date of valuation, and for the total period from October 1, 1872, to date of valuation is stated as follows:

	Operation.	Under lease.	Total period.
Operating income:			
Railway operating revenues	$94,641,003.01		$94,641,003.01
Railway operating expenses	64,333,509.25		64,333,509.25
Net revenue from railway operations	30,307,493.76		30,307,493.76
Railway tax accruals	4,598,563.41		4,598,563.41
Railway operating income	25,708,930.35		25,708,930.35
Revenues from miscellaneous operations	382,465.98		382,465.98
Total operating income	26,091,396.33		26,091,396.33
Nonoperating income:			
Hire of equipment	51,260.87		51,260.87
Joint-facility rent income	123,292.49		123,292.49
Income from lease of road		$41,903,479.98	41,903,479.98
Miscellaneous rent income	1,043,743.09		1,043,743.09
Dividend income	1,611,957.12		1,611,957.12
Income from funded securities	170,086.41		170,086.41
Income from unfunded securities and accounts	259,115.26	120.47	259,235.73
Income from sinking and other reserve funds	13,083.69		13,083.69
Release of premium on funded debt		120,235.00	120,235.00
Total	3,272,538.93	42,023,835.45	45,296,374.38
Gross income	29,363,935.26	42,023,835.45	71,387,770.71
Deductions from gross income:			
Hire of equipment	688,873.10		688,873.10
Joint-facility rents	22,477.80		22,477.80
Rent for leased road	4,828,979.23		4,828,979.23
Miscellaneous rents	220,127.38	110,833.33	330,960.71
Interest on funded debt	9,541,173.07	13,517,782.79	23,058,955.86
Interest on unfunded debt	1,092,515.18	244,760.08	1,337,275.58
Maintenance of investment organization		179,334.58	179,334.26
Total	16,394,145.76	14,052,710.78	30,446,856.54
Net income	12,969,789.50	27,971,124.67	40,940,914.17
Disposition of net income:			
Dividend appropriations of income	12,753,328.80	27,859,335.00	40,612,663.80
Income balance transferred to credit of profit and loss	216,460.70	111,789.67	328,250.37

If the delayed income debits and credits in the profit and loss account were transferred to income, the credit balance in that account would be increased to $571,896.75.

Profit and loss account.—The profit and loss account for the period from October 1, 1872, to date of valuation, as shown by records of the Old Colony Railroad, is as follows:

Credits:		
Credit balance transferred from income		$323,250.37
Delayed income credits—		
Railway tax accruals	$1,098.29	
Income from lease of road	211,748.07	
Income from unfunded securities and accounts	6,000.00	
Interest on funded debt	39,789.10	
		258,635.46
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Miscellaneous credits—		
Excess of recorded value of assets acquired from the Old Colony and Newport Railway Company over recorded value of the liabilities of that company assumed		594,641.82
Premium on sales of capital securities—		
Capital stock issued	3,076,943.49	
Funded debt issued	212,481.67	
		3,289,425.16
Profit on sales of investment securities, net		43,145.47
Profit on exchange of investment securities, as hereinafter explained		2,322,500.00
Proceeds from sale of five bonds of Nashua, Acton and Boston Railroad Company		150.00
Cash received in connection with fractional shares of stock of other companies exchanged for stock of the Old Colony Railroad		1,959.14
Insurance received on property loss at Newport, R. I.		15,000.00
Net increase in book value of equipment, charged to investment account		820,744.88
Total		7,674,452.30
Debits:		
Surplus applied to sinking and other reserve funds		211,748.07
Delayed income debits—		
Railway operating revenues	$14,256.43	
Dividend income	331.40	
Interest on unfunded debt	401.25	
		14,989.08
Miscellaneous debits—		
Cash payment to Boston and Providence Railroad by the Old Colony Railroad, for its leasehold rights in the former's property for 99 years from Apr. 1, 1888	1,300,000.00	
Less amortization through income for rent of leased road to June 30, 1893	68,250.00	
		1,231,750.00
Net balance in improvement account as of the effective date of the lease, representing expenditures for additions and betterments, operating expenses, not separable—		
Applicable to owned property		2,280,676.61
Applicable to leased property (Boston and Providence)		249,683.38

Reduction in value of improvement on leased railway property	468,072.18
Reduction in value of equipment	18,559.00
Adjustment of accounts assigned to the carrier for liquidation at time of lease, net	63,328.55
Adjustment of value of materials and supplies sold to the carrier at time of lease	85,924.36
Damage by fire in 1873	22,487.15

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Replacing station and interlocker at Walpole, Mass., destroyed by fire	8,741.80
Loss from operating of Union Freight Railroad	31,650.18
Shortage of ex-treasurers charged in 1891	45,018.63
Engraving bonds	1,310.00
Reduction in book value of investment securities	15,340.84
Notes receivable written off	46,581.04
Uncollectible accounts written off	89,370.12
Other miscellaneous debits	8,641.16
Credit balance on date of valuation	2,780,580.15
Total	7,674,452.30

Included in the profit and loss account are the following entries:

Credits:	
Recorded value of assets, other than road and equipment, acquired from the Old Colony and Newport Railway Company	$594,641.82
Increase in value of equipment	820,744.88
Debits:	
Decrease in recorded value of improvements on leased railway property	468,072.18
Decrease in recorded value of equipment	18,559.00

These items were debited and credited, respectively, to investment in road and equipment. If these entries were reversed, the credit balance in the profit and loss account on date of valuation would be decreased to $1,851,824.63. The item of premium on capital stock, $3,076,943.49, is not in accordance with the present classification. The items of delayed income credits, $258,635.46, and delayed income debits, $14,989.08, if included in the income account, would further modify the balance from income.

Investment in Road and Equipment

The investment in road, including land, on date of valuation is stated in the books of the Old Colony Railroad to be $42,348,414.30, made up as follows:

Road acquired:		
Recorded money outlay, securities issued, obligations assumed, advances, and investment securities applied by the Old Colony Railroad as the purchase price of property acquired from its predecessors.	$17,294,483.42	
Less ascribed value of equipment transferred to the equipment account	2,204,648.08	
		$15,089,835.34
Road constructed:		
Recorded money outlay	2,597,864.20	
Notes payable	264,998.00	
		2,862,862.20
Additions and betterments:		
Recorded money outlay	20,034,292.08	
Less cash proceeds from sale of road retired	2,307,859.61	
		17,726,432.47
Total		35,679,130.01

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Other items:		
Improvements on leased railway property	3,381,195.82	
Less amount charged to profit and loss in 1906	468,072.18	
		2,913,123.64
Net recorded value of equipment transferred to the carrier, as hereinafter explained		3,161,518.83
Excess of assets received over obligations issued and assumed in acquiring the property of the Old Colony and Newport Railway Company		594,641.82
Total		6,669,284.29
Grand total		42,348,414.30

The item of $17,294,483.42, representing property acquired from predecessors, may be segregated as follows:

Property of the Old Colony and Newport Railway Company:		
Capital stock issued	$5,100,020.00	
Funded debt assumed	2,941,000.00	
Loans and bills payable, assumed	466,236.14	
Other current liabilities, assumed	38,425.46	
Total	8,545,681.60	
Less recorded value of sundry assets received—		
Cash	74,302.50	
Miscellaneous physical property	298,953.00	
Investment securities at cost	136,599.84	
Investment in advances	111,760.53	
Loans and bills receivable	377,363.57	
Materials and supplies	153,057.97	
Other current assets	26,927.67	
Total	1,179,045.08	
		$7,366,63.526

Property of the Cape Cod Railroad Company:		
Capital stock issued	1,238,300.00	
Funded debt assumed	349,000.00	
Traffic balances payable assumed	125,848.93	
Other current liabilities assumed	19,937.83	
Total	1,733,086.76	
Less recorded value of sundry assets received—		
Cash	43,239.59	
Miscellaneous physical property	1,200.00	
Materials and supplies	38,229.96	
Other current assets	5,904.68	
Total	88,574.23	
141		1,644,512.53
Property of the Taunton and Middleboro Railroad Corporation:		
Recorded money outlay		175,000.00
Property of the South Shore Railroad Company:		
Capital stock issued	$500.00	
Funded debt assumed	275,000.00	
Other current liabilities assumed	1,123.96	
Recorded money outlay	6,158.00	
Investment securities at cost	134,375.84	
Total	417,157.80	
Less recorded value of sundry assets received—		
Cash	70,571.38	
Investment securities at cost	8,333.33	
Other current assets	670.71	
Total	79,575.42	
		337,582.38
Property of the Duxbury and Cohasset Railroad Company:		
Recorded money outlay	53,673.08	
Other current liabilities assumed	3,598.38	
Investment securities at cost	8,333.33	
Notes receivable canceled	66,937.50	
Total	132,542.29	
Less recorded value of sundry assets received—		
Other current assets	47.21	
		132,495.08
Property of the Boston, Clinton, Fitchburg and New Bedford Railroad Company:		
Capital stock issued	2,315,300.00	
Funded debt assumed	3,545,400.00	
Loans and bills payable assumed	126,000.00	
Other current liabilities assumed	35,648.23	
Total	6,022,348.23	
Less recorded value of sundry assets received—		
Investment securities at cost	10,000.00	
Miscellaneous account receivable	114,179.88	
Other current assets	25,332.91	
Total	149,612.79	
		5,872,735.44

Property of the Lowell and Framingham Railroad Company:		
Capital stock issued	127,425.00	
Funded debt issued	498,000.00	
Recorded money outlay	2,480.00	
		627,905.00
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Property of the Hanover Branch Railroad Company:		
Recorded money outlay		123,950.00
Property of the Fall River, Warren, and Providence Railroad Company:		
Recorded money outlay	$356,155.43	
Other current liabilities	4,194.47	
Total	360,349.90	
Less recorded value of sundry assets received—		
Other current assets	4,483.43	
		355,866.47
Property of the Fall River Railroad Company (of 1874):		
Capital stock issued	20,000.00	
Funded debt issued	200,000.00	
		220,000.00
Property of the Nantasket Beach Railroad Company (of 1881):		
Open account with the carrier		150,000.00
Property of the Plymouth and Middleboro Railroad Company:		
Recorded money outlay		287,800.00
Total outlay for properties acquired		17,294,483.42

In 1893, when the Old Colony Railroad leased its property to the carrier, the former's equipment was transferred to the latter at its recorded value of $3,161,518.83. The carrier assumed this amount as a liability to be settled at the termination of the lease and charged same to its investment in road and equipment account. This figure represents $2,204,648.08, the value ascribed to equipment acquired by the Old Colony Railroad from its predecessors, increased by $159,834.87 for additions and betterments, and $820,744.88 increase in value, credited to profit and loss, a total of $3,185,227.83, from which is deducted $5,150 cash proceeds from sale of equipment retired and $18,559 decrease in value of equipment charged to profit and loss, resulting in a net recorded value of equipment of $3,161,518.83. The carrier in its return of equipment has included equipment in service on date of valuation, both owned and acquired under lease as its own equipment. This item for equipment has therefore been excluded from the investment of the Old Colony Railroad.

In addition, the Old Colony Railroad charged its profit and loss account with $2,530,359.99 purporting to be ex-

penditures for additions and betterments to road and equipment during the period from 1881 to 1893, stating that $1,365,606.49 represented additions and betterments to road and $1,367,701.47 represented new equipment and improvements thereon. In absence of details concerning the circumstances under which these charges were made they have not been included in the above statement.

The "other items" are not in accordance with the present accounting classification of this commission. If such were eliminated from the investment in road and equipment account of the Old Colony Railroad and the equipment omitted, because it has been disposed of to the lessee, the balance therein would be reduced to $35,679,-130.01, representing investment in road only, summarized as follows:

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Money outlay	$23,795,207.66
Capital stock issued	8,801,545.00
Funded debt issued and assumed	7,810,400.00
Notes payable issued and assumed	857,234.14
Current liabilities of predecessors assumed	228,777.26
Investment securities valued at cost	142,709.17
Open account with the carrier	150,000.00
Notes receivable canceled	66,937.50
Increase in value of equipment, credited to profit and loss, net	802,185.88
Less—	
Recorded value of sundry assets received with property acquired from predecessors	1,501,338.16
Cash proceeds of lands sold to The Boston Terminal Company	1,458,992.00
Cash proceeds of lands sold to the Boston and Albany Railroad Company	614,925.00
Cash proceeds of lands sold Macallen and Company	90,000.00
Cash proceeds of miscellaneous land sales	38,293.65
Cash proceeds of sale of other retired road and equipment	110,798.96
Recorded value of equipment transferred to carrier	3,161,518.83

The carrier has stated that the outlays include $329,-745.23 as the cost of certain lands classified herein as noncarrier lands. Of that amount, the chapter on original cost to date shows $324,607.18 and $2,962.17 as supported by accounting records, and $2,175.88 not so supported. The carrier also states that the outlays include $519,914.47 as the cost of lands classified herein as partly carrier and partly noncarrier. Of the latter amount, there is shown in the chapter on original cost to date $493,444.44 and $9,679.58 as supported by the accounting records, and $16,790.45 not so supported. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

In the above certain deductions have been made which do not conform to present practice. The original cost or entry as investment of property retired has not been ascertained. It is not known whether further deductions should be made for property retired or abandoned. There may be included part or all of the cost of lands used partly for carrier and partly noncarrier purposes.

Original Cost to Date.

The original cost to date of all common-carrier property owned by the Old Colony Railroad can not be ascertained from the records that are obtainable, owing to the absence of the accounting records of certain of its predecessors and the lack of details in some of those obtainable. No information was obtainable relative to the original cost or outlay for properties, aggregating 62.21 miles of road. The outlay for the remainder of the property is given in the following schedule.

Recorded money outlay	$36,380,130.33
Outlay in short-term notes at par	1,029,822.41
Outlay in capital stock at par	173,356.45
Outlay in funded debt at par	10,300.00
Unknown considerations	277,784.92
From which should be deducted the portions, not definitely ascertainable, that may be represented by property sold for proceeds of	2,614,840.45

144 The above outlay segregated on basis of the properties acquired is shown in the following schedules:

Outlay by—	Cash and notes payable retired with cash.	Capital securities issued.	Other considerations.	Less proceeds from sale of roads retired.
Old Colony Railroad	$22,897,154.28			$2,307,859.61
Old Colony and Newport Railway Company	1,950,336.09	$31,800.00		227,052.35
Old Colony and Fall River Railroad Company	511,575.71		$28,000.00	
Old Colony Railroad Corporation (of 1844)	1,908,753.74			
Fall River Railroad Company (of 1846)	934,127.82			
Dighton and Somerset Railroad Company	1,754,967.32			
Easton Branch Railroad Company	56,144.27			
Cape Cod Railroad Company	1,442,087.97	51,042.98		
Middleborough Railroad Corporation	127,770.93	6,500.00		
South Shore Railroad Company	424,858.28	21,535.00		1,461.35
Duxbury and Cohasset Railroad Company	456,499.85			
Boston, Clinton, Fitchburg and New Bedford Railroad Company	26,248.66			5,725.86
Boston, Clinton and Fitchburg Railroad Company	766,587.80	50,000.00	277,784.92	15,423.84
Fitchburg and Worcester Railroad Company	289,639.45	200.00		7,240.31
Mansfield and Framingham Railroad Company	788,524.34	17,900.00		16,424.51
New Bedford Railroad Company	386,316.17			23,717.31
New Bedford and Taunton Railroad Corporation	507,877.24			5,390.81
Taunton Branch Railroad Company	499,928.12	1,098.47		
Dorchester and Milton Branch Railroad Company	133,131.97			
Lowell and Framingham Railroad Company	983,618.13	1,300.00		
Fall River, Warren and Providence Railroad Company	330,508.80	2,280.00		3,282.10
Fall River Railroad Company (of 1874)	447,594.69			1,262.40
Nantasket Beach Railroad Company (of 1880)	73,448.13			
The Hull and Nantasket Beach Railroad Company	24,800.50			
Boston, Hingham and Hull Railroad Company	25,378.81			
Total	37,747,879.07	183,656.45	305,784.92	2,614,840.45

The original cost or original outlay on the property sold for aggregate cash of $2,614,840.45 in the above schedule can not be obtained.

The foregoing statement of outlay represents the carrier property, exclusive of equipment, acquired by the Old Colony Railroad, the cost of which was recorded in the accounts of the companies which produced it. Property of like character was acquired from other companies for which there are no available accounting records. Unverified costs of these several properties as reported to the State of Massachusetts are shown following, together with the purchase price of the Granite Railway Company paid by the Old Colony and Newport Railway Company, in cash and for which property there can be found no other measure of the cost.

	Miles of road	Reported costs
Plymouth and Middleborough Railroad Company	15.69	$305,000.00
Nantasket Beach Railroad Company (of 1881)	3.85	260,693.20
Hanover Branch Railroad Company	7.85	174,012.36
Fairhaven Branch Railroad Company	14.95	370,172.82
Cape Cod Central Railroad Company	18.07	312,589.12
Granite Railway Company	1.80	29,250.00
Total	62.21	1,451,717.50

145 The amount shown for the Plymouth and Middleborough Railroad Company was reported as money outlay and that for the Granite Railway Company as purchase price. The considerations represented by the other reported costs are not known.

The original cost of the property retired has not been obtained and the above outlays may be overstated or understated to the amount of the difference between the original cost of the property in question and the amount of the proceeds derived from the sale thereof.

In addition to the outlays stated above, the Taunton Branch Railroad Company charged its profit and loss account with the sum of $161,111.33 and the Old Colony Railroad charged its profit and loss account with $2,530,359.99. These charges are recorded as expenditures for additions and betterments to road and equipment, but in absence of details regarding the circumstances of such charge they have not been included in the above summary. Included in the above outlay is the sum of $459,736 which is the recorded cost of land owned by the Old Colony Railroad which we

have classified as partly carrier and partly noncarrier. The Old Colony Railroad reports in addition land so classified upon which costs could not be determined, with substantial deed considerations amounting to $14,890.45.

The above outlay does not include its recorded original cost of any equipment. All of the equipment owned by the Old Colony Railroad on July 1, 1893, was transferred to the carrier, which charged the appraised value thereof to its investment in road and equipment account.

Cost of lands—The Old Colony Railroad reports the original cost of all carrier and noncarrier lands owned, on date of valuation, as $12,107,041.62. We have excluded $88,142.62 as representing items not constituting land costs, as follows:

Payments for materials taken in construction of road	$669.46
Payments for gravel pit rights which have expired	573.30
Payment for construction of a sidetrack	20,780.61
Payment for construction of an underpass	603.00
Proportion of amounts paid by Commonwealth of Massachusetts, returned as paid by the carrier	11,701.31
Payments by the city of Newport, R. I., for lands originally acquired by them and reconveyed to carrier for nominal deed considerations	31,776.55
Amounts named in deeds and condemnation awards returned in excess of recorded payments for 22 parcels	22,038.39
Total	88,142.62

The return further includes $341,136.16 of costs that can not be allocated to parcels and which may be duplicated in the return. With respect to this item, the carrier returns $341,136.16 which it could not assign to parcels, and, on the other hand, it returned a number of parcels for which it could not ascertain the recorded cost, but for which it reported the considerations named in deeds and in condemnation awards. Therefore, it is not improbable that the $341,136.16 is included, at least in part, in these considerations. Furthermore, the carrier disposed of certain lands, and those costs, that can not be allocated may have applied, in part, to lands that it no longer owns. Consequently it is apparent that the condition of the record is such that a definite statement that the $341,136.16 is or is not duplicated in the return can not be made.

The return includes costs of $3,386,455.07, representing claimed expenditures for land, land damages, and
146 other expenses for grade-crossing elimination. The carrier has filed a claim in behalf of the Old Colony Railroad, with our Bureau of Valuation, amounting to

$682,067.29, in connection with the cost of grade-crossing elimination, which includes a part of the cost of lands returned by the company. If the original cost of the lands is used in lieu of the ascertained present value of lands and the carrier's claim is included in the cost of reproduction new, there would be a duplication of some indeterminate part of the amount of the claim. For that reason this item is hereinafter classified and explained separately from the items for lands concerning which no further explanations appear to be necessary. Excluding the above items, the resulting balance of $8,291,307.77, made up in part of costs supported by accounting records and in part by substantial deed considerations, which the Old Colony Railroad claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification.	Cost supported by accounting records.	Amounts not supported by accounting records.
As a whole.		
Carrier lands owned and leased to the carrier....	$6,913,473.67	$433,860.51
Carrier lands jointly owned and leased to the carrier, portion of Old Colony Railroad.....	82,707.62	.....
Carrier lands used but not owned.....	9,146.27	2,460.00
Noncarrier lands owned, leased to the carrier....	324,607.18	2,175.88
Noncarrier lands jointly owned, leased to the carrier, portion of Old Colony Railroad.....	2,962.17	.....
Lands classified as partly carrier and partly noncarrier, owned, leased to the carrier.....	493,444.44	16,790.45
Lands classified as partly carrier and partly noncarrier, jointly owned, leased to the carrier, portion of Old Colony Railroad.....	9,679.58	.....
In Massachusetts.		
Carrier lands owned and leased to the carrier....	6,631,825.74	408,144.95
Carrier lands used but not owned.....	9,146.27	210.00
Noncarrier lands owned, leased to the carrier....	281,492.63	808.98
Lands classified as partly carrier and partly noncarrier, owned, leased to the carrier.....	455,657.26	14,090.45
In Rhode Island.		
Carrier lands owned and leased to the carrier....	281,647.93	25,715.56
Carrier lands jointly owned and leased to the carrier, portion of the Old Colony Railroad....	82,707.62	.....
Carrier lands used but not owned.....	.....	2,250.00
Noncarrier lands owned, leased to the carrier....	43,114.55	1,366.90
Noncarrier lands jointly owned, leased to the carrier, portion of the Old Colony Railroad....	2,962.17	.....
Lands classified as partly carrier and partly noncarrier, owned, leased to the carrier.....	37,787.18	2,700.00
Lands classified as partly carrier and partly noncarrier, jointly owned, leased to the carrier, portion of the Old Colony Railroad.....	9,679.58	.....

The carrier has stated that the above outlays include $329,745.23 as the cost of certain lands classified herein as

noncarrier lands. Of that amount the following section of this chapter shows $324,607.18 and $2,962.17 as supported by accounting records and $2,175.88 not so supported. The carrier also states that these outlays include $519,914.47 as the cost of lands classified herein as partly carrier and partly noncarrier. Of the latter amount there is shown in the section of this chapter devoted to cost of lands, $493,-444.44 and $9,679.58 supported by the accounting records and $16,790.45 not so supported. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

147 The recorded cost of land and land damages incident to the elimination of grade crossings, hereinbefore referred to, was assumed by the respective participants as follows:

Old Colony Railroad	$1,798,913.59
Boston and Maine Railroad	758.15
Street Railway	1,953.07
State of Massachusetts	615,670.35
Various municipalities	969,159.91
Total	3,386,455.07

The proportion expended by the Old Colony Railroad has been verified in the accounting records and consists of recorded money outlay classified as shown hereunder:

Carrier lands owned and used	$1,667,882.36
Noncarrier lands owned	13,376.30
Lands classified as partly carrier and partly noncarrier—owned	117,654.93
Carrier rights owned and used	.....
Total	1,798,913.59

A statement has been submitted by the carrier of $682,-067.29 for consequent-al damages in connection with the elimination of grade crossings on the Old Colony Railroad, which it claims should be considered in the reproduction costs of its property. This claim has been classified as follows:

Items included in the land return	$986,440.84
Items not included in the land return	63,540.33
Total	1,049,981.17
Less amount allocated to other parties	367,913.88
Balance claimed by the company	682,067.29

Inasmuch as the total expenditure includes such a large proportion of items appearing in the land return, the

amount claimed as consequential damages must of necessity include an equal proportion of such items which, if allowed as part of the reproduction costs of the crossing would, to that extent, be a duplication of items included as part of the original cost of lands the total amount of which can not be definitely stated, if original cost of land is used in lieu of present value.

Cost of equipment.—The Old Colony Railroad has made no return of equipment. As hereinbefore explained, the equipment of the Old Colony Railroad was delivered to the lessee, under terms of the lease, at an appraised value of $3,161,518.83. The carrier returns all equipment used by it, including that delivered to it under terms of the lease, as its owned equipment.

Improvements on Leased Railway Property.

The balance in this account of the Old Colony Railroad on date of valuation was $2,913,123.64, of which $113,123.64 was for improvements on the Providence, Warren and Bristol and $2,800,000 for improvements on the Boston and Providence. In addition, the Old Colony Railroad records an expenditure of $468,072.18 for improvements on the Boston and Providence which was charged to
148 the profit and loss account of the former, making the total expenditure for improvements on leased railway property $3,381,195.82.

Miscellaneous Physical Property.

The accounts of the Old Colony Railroad do not record as such any investment in miscellaneous physical property on date of valuation. However, certain lands with costs of $329,745.23, owned by the Old Colony Railroad and charged to its account for investment in road and equipment, have been classified herein as noncarrier lands. On the other hand, other lands owned by the Old Colony Railroad and charged to its account for investment in road and equipment, have been classified herein as partly carrier and partly non-carrier as detailed hereunder:

	Costs supported by accounting records.	Amounts not supported by accounting records.
Lands classified as partly carrier and partly noncarrier, owned, leased to carrier	$493,444.44	$16,790.45
Lands classified as partly carrier and partly noncarrier, jointly owned, leased to the carrier, portion of Old Colony Railroad	9,679.58	.....

The amount that would be includible in the miscellaneous physical property account to represent the investment in noncarrier lands has not been fully determined.

Investments in Other Companies.

The records of the Old Colony Railroad Company state that on date of valuation, it owned securities of other companies as follows:

	Par value.	Book value.
Preferred stock of the Providence, Warren and Bristol	$800	$1,600.00
Common stock of The Boston Terminal Company	100,000	100,000.00
Common stock of the Union Freight Railroad (Boston, Mass.)	143,500	79,014.42
Common stock of the Oak Bluff Land and Wharf Company	100	11.00
Common stock of Fall River Railroad Company (of 1846)	500	87.50
Common stock of Lowell and Framingham Railroad Company	600	60.00
Bonds of New England Navigation Company	3,600,000	3,600,000.00
Total	3,845,500	3,780,772.92

Any income derived from these securities since the property of the old Colony Railroad was leased to the carrier has been taken into the accounts of the latter under the terms of the lease.

Leased Railway Property.

The Boston and Providence was leased to the Old Colony Railroad on March 31, 1888, for 99 years, which lease was transferred to the carrier on February 15, 1893, as shown in detail in report on the carrier.

The Providence, Warren and Bristol was leased to the Old Colony Railroad on July 1, 1891, for 95 years and 9 months, which lease was transferred to the carrier on February 15, 1893, as shown in detail in report on the carrier.

The Old Colony Railroad leased its railroad system to the carrier from March 1, 1893, for 99 years, as shown in detail in report on the carrier.

149 Boston and Providence (Mass.).

Introductory.

The Boston and Providence (Mass.) and the Boston and Providence (R. I.), while of record as distinct corporations, are in some ways treated as a single entity. Authority for the merger of the two exists; but the formalities of consolidation have not taken place. Reports to us are for single entity. When there is not a distinction made the single entity is referred to as the Boston and Providence.

Corporate History.

The following chart shows the names of the corporations, the respective dates of incorporation, and for each predecessor the date of succession, the immediately succeeding corporation, and the manner of succession. Reference to each of these corporations is made in the last column by its respective number shown in the first column.

No.	Name.	Incorporation.	Succession.
1	Boston and Providence Railroad Corporation (Mass.)	In Massachusetts, June 22, 1831.	
2	Seekonk Branch Railroad Company.	In Massachusetts, Apr. 16, 1836.	Sold to 1, Aug. 9, 1839.
3	Stoughton Branch Railroad Company.	In Massachusetts, Mar. 16, 1844.	United with 1, Feb. 6, 1873.

The Boston and Providence (Mass.) was incorporated under a special Massachusetts act approved June 22, 1831, and its organization was perfected July 11, 1831. In 1834 the Boston and Providence (Mass.) appointed a committee to make application to the Legislature of Rhode Island to enter that State and a charter for that purpose was obtained as the Boston and Providence Railroad Corporation (R. I.). The two companies were a part of one plan to establish a railroad between Boston and Providence. The Boston and Providence (Mass.), through lease agreements and by acquiring all of the capital stock of the Boston and Providence (R. I.), has had control of the property of that company since 1835. By special act of Rhode Island passed at its June session 1835, the Boston and Providence (Mass.) and Boston and Providence (R. I.) were authorized to unite and form one company, but this has not been done. The returns and reports to us have been made as for a single corporation.

Development of Fixed Physical Property.

The following tabulation shows the mileage of road owned by the Boston and Providence (Mass.) and used by the carrier on date of valuation.

By purchase:	Recorded mileage.
From the Stoughton Branch Railroad Company on Feb. 6, 1873; constructed by that company, Canton Junction to Stoughton, Mass., 1873	3.94
From the Seekonk Branch Railroad Company on Aug. 9, 1839; constructed by that company, Old Wharf Point branch, 1839 (0.379 mile abandoned)	.....
Total recorded mileage acquired	3.94

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By construction: Constructed by the Boston and Providence (Mass.):	Recorded mileage.
Boston to Back Bay, Mass., 1839	0.71
Back Bay to Readville, Mass., 1834	9.32
Readville to East Junction, Mass., 1835	24.61
East Junction, Mass., to Rhode Island State line, via Pleasant View, 1847	3.60
East Providence, R. I. branch, 1835	2.00
Readville to Dedham, Mass., 1835	2.11
East Junction, Mass., to Rhode Island State line, via Rumford, 1835	3.00
East Providence, R. I., to Massachusetts State line, 1835	2.60
Forest Hills to Dedham, Mass., 1850	5.30
Providence-Midland division connection, 1898	1.40
Total mileage constructed	54.65
Total owned mileage	58.59
Difference between recorded mileage and mileage inventoried as of date of valuation	0.550
Mileage inventoried as of date of valuation	58.040

History of Corporate Financing.

Syndicating, banking, and other financial arrangements.—Funds for capital financing were obtained principally through the issue and sale of capital stock, and funded debt. Some funds for current needs and for additions and betterments to the property were obtained through the issue of short-term notes, and notes to the amount of $475,000 were given for the purchase of other companies' securities. Some of the capital stock of the Boston and Providence (Mass.) was sold through Baring Brothers, in London, who acted as agents of this company in paying, from the funds so received, for rails bought in Europe. Since 1888 the lessees have provided funds for additions and bet-

terments to the property of the Boston and Providence (Mass.) made at their own expense, as required by the terms of the lease, and have provided a sinking fund which, with the accretions, will be sufficient to retire all of the funded debt of the Boston and Providence (Mass.) within the period of the lease.

Capitalization.—The Boston and Providence (Mass.) has issued and retired securities, leaving outstanding on date of valuation amounts as shown in schedule following.

Class.	Issued.	Retired.	Outstanding.
Common stock	$4,000,000	.....	$4,000,000
Debenture bonds	3,280,220	$1,110,220	2,170,000
Total	7,280,220	1,110,220	6,170,000

151 The recorded considerations received for the securities issued were as follows:

Par value issued.	Consideration.	Recorded value.
$6,721,618.92	Cash	$6,807,090.64
306,601.08	Notes receivable	306,601.08
25,000.00	Notes payable recovered	25,000.00
127,000.00	Exchanged for other bonds of this company	127,000.00
100,000.00	Exchanged for capital stock of the Boston and Providence (R. I.)	100,000.00
7,280,220.00	Total par value of securities.	
	Total recorded value	7,365,691.72
	Premiums on capital stock:	
97,737.64	Credited to profit and loss.	
3,557.36	Credited to operating expenses.	
3,598.25	Credited to shareholders.	
	Premiums on funded debt:	
62,822.49	Credited to profit and loss.	
	Discount on capital stock:	
	Charged to profit and loss	72,385.00
	Discount on funded debt:	
	Charged to profit and loss	7,518.75
	Commission on capital stock:	
	Charged to profit and loss	2,086.14
	Charged to operating expenses	254.13
7,447,935.74		7,447,935.74

The recorded considerations received for the securities retired were as follows:

Par value reacquired.	Consideration.	Ascribed cost to reacquire.
$983,220.00	Cash	$983,457.50
127,000.00	Exchanged for other bonds of this company	127,000.00
1,110,220.00	Total par value of securities.	
	Total ascribed cost	1,110,457.50
237.50	Premium paid in retirement charged to profit and loss.	
1,110,457.50		1,110,457.50

Short-term notes.—From date of incorporation to date of valuation the Boston and Providence (Mass.) issued short-term notes, all of which had been retired prior to 1889 for considerations as follows:

Issued.	Consideration.	Retired.
$6,614,374.66	Cash	$8,085,838.35
336,667.12	Construction of property.	
475,000.00	Securities of other companies.	
884,796.57	Settlement of open accounts	200,000.00
214,000.00	Renewal of due notes	214,000.00
	Capital stock of the Boston and Providence (Mass.) at par	25,000.00
8,524,838.35	Total	8,524,838.35

Increase or decrease of securities in reorganization.—The amount of securities of the Seekonk Branch Railroad Company outstanding at the demise of that company can not be exactly determined. The authorized capital stock was $50,000, but it had not all been paid up. Apparently the amount expended by the company in acquiring its property was $31,655.70, and that amount was paid to it in cash by the Boston and Providence (Mass.) for its road, equipment, and franchises. The Stoughton Branch Railroad Company had outstanding $85,400 par of capital stock. The Boston and Providence (Mass.) acquired this stock for cash at par and did not directly replace it with
152 other securities. The apparent decrease in securities issued in these reorganizations was $117,055.70, or the sum of the securities issued by the Seekonk Branch Railroad Company and the Stoughton Branch Railroad Company, none of which was replaced by the Boston and Providence (Mass.).

The Boston and Providence (Mass.) acquired all of the capital stock of the Boston and Providence (R. I.), of the par value of $150,000, for $50,000 in cash and $100,000 par value of its own stock, thus affecting a temporary deduction in the publicly held stock of $5,000. If the stock of the Boston and Providence (R. I.) now held by the Boston and Providence (Mass.) is sold, this temporary decrease would become an increase of $100,000.

Results of Corporate Operations.

Income account.—The income account of the Boston and Providence (Mass.) for the period from June 4, 1834, to date of valuation, together with period of operation by owner, and period of operation by lessee, is stated as follows:

	Period of operation by owner, June 4, 1834, to Apr. 10, 1888.	Period of operation by lessees, Apr. 11, 1888, to date of valuation.	Period, June 4, 1834, to date of valuation.
Operating income:			
Railway operating revenues	$46,973,681.07	.....	$46,973,681.07
Railway operating expenses	30,229,311.00	.....	30,229,311.00
Net revenue from railway operations	16,744,370.07	.....	16,744,370.07
Railway tax accruals	2,326,873.81	.....	2,326,873.81
Total operating income	14,417,496.26	.....	14,417,496.26
Nonoperating income:			
Income from lease of road	.....	$13,481,369.92	13,481,369.92
Miscellaneous rent income	539,629.57	.....	539,629.57
Dividend income	421,534.50	8,800.00	430,334.50
Income from unfunded securities and accounts	252,532.88	1,531.09	254,063.97
Total	1,213,696.95	13,491,701.01	14,705,397.96
Gross income	15,631,193.21	13,491,701.01	29,122,894.22
Deductions from gross income:			
Rent for floating equipment (ferry boat)	52,348.28	.....	52,348.28
Rent for leased road	339,145.39	.....	339,145.39
Interest on funded debt	694,474.83	2,335,786.75	3,030,261.58
Interest on unfunded debt	589,096.02	91,160.00	680,256.02
Maintenance of investment organization	.....	119,320.83	119,320.83
Total	1,675,064.52	2,546,267.58	4,221,332.10
Net income	13,956,128.69	10,945,433.43	24,901,562.12
Disposition of net income:			
Dividend appropriation of income	12,941,535.00	10,700,000.00	23,641,535.00
Income balance transferred to credit of profit and loss	1,014,593.69	245,433.43	1,260,027.12

The income balance transferred to profit and loss includes certain items which properly should not be included, and other items which should have been included are omitted, classified as follows:

Additions to income:		
Delayed income credits in profit and loss		$1,625.19
Loss on sale of 625 shares of stock reacquired, charged to income		2,957.62
Reduction in book value of stock of Providence, Warren and Bristol, charged to income		19,905.00
Total additions to income		24,487.81
Deductions from income:		
Delayed income debits in profit and loss		$706,835.70
Net premium on securities issued—		
Premiums	$3,557.36	
Discount	254.13	
		3,303.23
Gain on acquisition on sale of investment in securities		13,814.04
Total deductions from income		723,952.97
Net deduction from income		699,465.16

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If these items were accounted according to our present classification the income balance of $1,260,027.12 would be reduced to $560,561.96.

Profit and loss account.—The profit and loss account for the period from June 4, 1834 to date of valuation, as shown by records of the Boston and Providence (Mass.) is as follows:

Credits:		
Balance transferred from income, credit	$2,304,319.08	
Balance transferred from income, debit	1,044,291.96	
Balance transferred from income		$1,260,027.12
Delayed income credits—		
Income from unfunded securities		1,625.19
Miscellaneous credits—		
Premium on capital stock issued	97,737.64	
Premium on funded debt issued	62,822.49	
Profit on sales of stock reacquired	13,821.73	
Profit on sales of investment securities	4,539.29	
Proportion of profits of the Norfolk County Railroad Company for 12 months to Nov. 30, 1856	5,478.05	
Cash bonus for lease of road (contra)	1,300,000.00	
Revaluation of machinery, and tools	75,042.14	
Revaluation of equipment	663,834.35	
Other miscellaneous credits	7,847.13	
		2,231,122.82

Sundry receipts—		
Proportion of assessment for cost of Seekonk bridge collected from the Providence and Worcester. See debit item $20,104.98	6,701.66	
Received from gravel lands	500.00	
Sale of old house and barn	135.00	
		7,336.66
Grand total		3,500,111.79
Debits:		
Delayed income debits—		
Operating expenses	31,066.48	
Claims account accident at Roslindale	423,168.90	
Claims, account Bussey branch accident	199,728.53	
Taxes	27,803.76	
Rents for carrier property	24,597.74	
Interest on unfunded debt	470.29	
		706,835.70
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Stock discount extinguished through surplus—		
Discount on $418,973.50 par	$73,385.00	
Commission on stock sold	2,086.14	
		75,471.14
Debt discount extinguished through surplus—		
Discount on $202,101.67 par		7,518.75
Miscellaneous debits—		
Adjustment to par of capital stock reacquired	6,090.00	
Loss in retirement of funded debt	237.50	
Loss on sale of investment securities	100,590.06	
Adjustment of book value of investment securities	126,634.27	
Paid the Boston and Providence (R. I.) for keeping hotel opened	3,750.00	
Proportion paid for consolidation of Sound lines	32,500.00	
Uncollectible accounts charged off and other accounts canceled	49,412.81	
Bonus received for lease of road distributed to stockholders as divided (contra)	1,300,000.00	
Reduction of book investment in road and equipment as depreciation	111,858.30	
Reduction in book investment in road and equipment without explanation	406,337.80	
Other miscellaneous debits, no detail, records missing	70,445.40	
		2,207,856.14
Sundry expenditures—		
Filling land at Boston, 1862	43,028.67	
Cost of new bridge at Berkeley Street, Boston	17,270.79	
Cost of second track over par value 2,000 shares of capital stock sold	10,197.78	
Cost of new engine house at Roxbury	58,219.71	
Cost of new bridge at India Point, R. I.	76,741.93	
Cost of improvements at India Point, R. I.	32,981.78	
New iron bridge at Central Falls, R. I.	40,000.00	
"Improvements," no detail in accounting records	83,994.78	

Proportion of cost of third track	37,500.00	
Paid city of Providence, assessment account construction of Seekonk bridge. See credit item $6,701.66	20,104.98	
		420,040.42
Credit balance on date of valuation		83,389.64
Grand total		3,500,111.79

If the balance transferred from income was $560,561.96, as indicated that it would be under the present accounting classification, the balance in profit and loss on date of valuation, instead of being a credit of $83,389.64, would be a debit balance of $616,075.52.

155 Investment in Road and Equipment.

The investment in road and equipment, including land, on date of valuation is stated in the books of the Boston and Providence (Mass.) to be $5,673,198.59, made up as follows:

Road:		
Cost of roads purchased—		
Seekonk Branch Railroad Company	$31,655.70	
Stoughton Branch Railroad Company	85,400.00	
Providence and Worcester	389,881.67	
		$506,937.37
Original road and extensions		2,807,515.10
Additions and betterments to Apr. 1, 1888		2,706,570.59
Total debits, road		6,021,023.06
Less—		
Sales of land and material		635,307.43
Amount transferred to equipment account without explanation		121,324.41
Amount representing noncarrier property transferred to other accounts		77,573.98
Total credits, road		834,205.82
Net debit, road		5,186,817.24
Equipment:		
Purchased and built		364,049.32
Amount transferred from road account without explanation		121,324.41
Total debits, equipment		485,373.73
Less—		
Sales of equipment		37,705.70
Credit entries made in the ledger in a period for which there are no supporting records		182,409.73
Total credits, equipment		220,115.43
Net debit, equipment		265,258.30

Other items:	
Debits—	
Amount for equipment transferred from operating expenses	54,000.00
Capital stock of the Boston and Providence (R. I.)	150,000.00
Paid the Boston and Providence (R. I.) for cancellation of a contract	20,000.00
Increase by appraisal in book value of machinery and tools made as of the effective date of the lease to the Old Colony Railroad	75,042.14
Increase by appraisal in book value of equipment made as of the effective date of the lease to the Old Colony Railroad	663,834.35
Total other items, debit	962,876.49

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Credits—	
Received for right to cross right of way granted to another carrier	14,310.00
Amount received from lessee (the carrier) as part consideration for an exchange of property in connection with a relocation of the road of the Boston and Providence (Mass.) in the city of Boston to reach the South Station	209,247.34
Reduction in book value of lands without explanation	19,620.80
Reduction in book value of other carrier property without explanation	386,717.00
Depreciation of equipment charged to profit and loss	111,858.30
Total other items, credit	741,753.44
Net debit, other items	221,123.05
Net balance, investment in road and equipment	5,673,198.59

The carrier has stated that the outlays of the Boston and Providence (Mass.) and Boston and Providence (R. I.) are $59,313.91 for lands classified as noncarrier and $104,927.38 as partly carrier and partly noncarrier. These amounts include $1,805.85 and $15,197.30, respectively, applicable to lands owned by the Boston and Providence (R. I.). Of the remainders, $57,508.06 and $89,730.08, respectively, the chapter on original cost to date shows $21,323.06 (comprising $18,558.06 and $2,765) and $79,953.53 as supported by the accounting records, and $36,185 and $9,776.55 as not so supported. The portion of the cost of partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

When that amount is determined, in respect to the lands owned by the Boston and Providence (Mass.), the difference between the sum of it and the cost of lands classified as noncarrier, less the amount included in the account for investment in miscellaneous physical property which was not transferred from the account for investment in road and

equipment, should be adjusted in the accounts for investment in road and equipment and miscellaneous physical property; if the difference is greater than the amount heretofore transferred from the account for investment in road and equipment, the excess should be deducted from that account and added to the account for investment in miscellaneous physical property; if less, the amount by which it is less should be added to the former account and deducted from the latter.

The amount of $77,573.98 transferred from the account for investment in road and equipment to the account for investment in miscellaneous physical property may include some part or all of the amount, $59,313.91, stated by the carrier in its protest to represent lands classified as non-carrier lands, but the record is not sufficient to show the identity of the lands included in the first-named amount, $77,573.98.

All of the equipment owned by the Boston and Providence (Mass.) on April 11, 1888, when its property was leased, was delivered to the lessee and none has since been acquired. The carrier, the present lessee, has added to its accounts for investment in road and equipment the appraised value of the equipment delivered under the lease, $871,234.35, and has recorded its liability to the Boston and Providence (Mass.) in that sum. The carrier, in its return of equipment, has included all equipment in use on date of valuation, both owned and used, as its own equipment.

157 If equipment be omitted, for the reasons stated above, and if the "other items" were eliminated from the investment in road and equipment account of the Boston and Providence (Mass.) and the remaining items were taken at their recorded values, the balance therein would be reduced to $5,186,817.24, representing investment in road only. This balance, as adjusted, would, so far as it is resolvable into its component elements, include the following classes of outlay:

Recorded money outlay	$5,389,447.12
Short-term notes issued, at par value	288,517.12
Notes receivable surrendered, at par value	15,496.20
Accounts payable	265,851.43
Unknown considerations recorded at	61,711.19
From which should be deducted the portions, not definitely ascertainable, that may be represented by—	
Property sold for proceeds of	635,307.43
Amount transferred by the Boston and Providence (Mass.) to its equipment account, without explanation	121,324.41
Amount representing noncarrier property, which the Boston and Providence (Mass.) transferred to its miscellaneous physical property account	77,573.98

It is not known whether the retirements credited to the investment in road and equipment account cover all property retired or abandoned. The outlays by the Boston and Providence (Mass.), summarized above, include outlays by that company for additions and betterments to property of the Boston and Providence (R. I.), which can not be segregated. The outlays by the Boston and Providence (Mass.) may also include some of the cost of noncarrier land and some of the cost of partly carrier and partly noncarrier land. Data as to the cost of such lands will be found under the caption Original Cost to Date.

Certain of the "other items" listed in the analysis given of the Boston and Providence (Mass.) investment in road and equipment account, are more fully described below:

The Boston and Providence (Mass.) in 1846 bought all of the capital stock of the Boston and Providence (R. I.) for $50,000 in cash and its own capital stock of the par value of $100,000. No formal conveyance of the physical property was made but the road of the Boston and Providence (R. I.) has been held and treated in the accounts of the Boston and Providence (Mass.) as its owned property. In 1837 a contract was made with the Boston and Providence (R. I.) for the maintenance and operation by the latter of a hotel in Providence and in consideration thereof the Boston and Providence (Mass.) agreed to pay $2,500 a year. A controversy arose concerning the compliance of the Boston and Providence (R. I.) with its obligations under the contract and the Boston and Providence (Mass.) paid $20,000 in 1843 in settlement of the matter and for the cancellation of the contract. No property was acquired by the Boston and Providence (Mass.) by this payment. When the property of the Boston and Providence (Mass.) was leased to the Old Colony Railroad in 1888 an inventory and appraisal of the machinery and tools delivered to the lessee was made.

The account for investment in road and equipment was increased by $75,042.44 for machinery and tools and that amount was credited in profit and loss.

158 In 1908 the Boston Elevated Railway Company paid $12,200 for the right to cross the right of way of the Boston and Providence (Mass.) and in 1910 it was charged $2,110 "for damage to property by the erection of its station at Forest Hills, Mass." The sum of these two amounts, $14,310, was credited by the Boston and Providence (Mass.) to its account for investment in road and equipment, but it is not apparent from the record that its property was diminished.

Credit entries were made in these accounts with corresponding charges to profit and loss to reduce the book cost of lands $12,170.46 in 1859 and $7,450.34 in 1881 and to reduce the recorded cost of the road, as shown in its construction account, by $313,528.02 in 1859 and $73,188.98 in 1860. The sum of these four items appears in profit and loss as $406,337.80. The record affords no explanation of these reductions in the previously recorded book cost of the property.

Under authority of the Massachusetts Legislature the Boston Terminal Company established its terminal, called the South Station, in Boston and the five roads entering the city on the southerly side were authorized to extend their lines to and make use of the terminal facilities thus afforded. Each of the five companies was authorized to subscribe $100,000 of the capital stock of the terminal company. The carrier as lessee of the Boston and Providence (Mass.), paid the latter's subscription and relocated its line within the city to reach the terminal company's tracks. The cost of this work to the carrier, as agreed to by the Boston and Providence (Mass.), was $4,910,752.66, which included the $100,000 paid for the subscription of the Boston and Providence (Mass.) to the Boston Terminal Company stock.

No details of these transactions have been entered in the accounts of the Boston and Providence (Mass.). On May 4, 1904, the Boston and Providence (Mass.) sold to the carrier the real estate commonly called the Park Square Property, formerly used as its Boston terminal, which had been released from transportation uses by the building of the new entrance to the South Station. The agreed price was $5,120,000. No money was passed in this sale, but the

two companies agreed that the expenditures of the carrier, $4,910,752.66, and the agreed price of the property to be taken by it, $5,120,000, should be entered in one account and "the parties shall be liable one to the other upon the balance of the account." These larger sums were not entered in the accounts of the Boston and Providence (Mass.) for investment in road and equipment, but the difference, $209,247.34, was deducted from that account and charged to the carrier as being the excess of the agreed price of the property delivered to it, over the total of the expenditures made for account of the Boston and Providence (Mass.) in connection with its entrance to the South Station.

The property released from transportation uses by the new terminal provided had cost the Boston and Providence (Mass.) $829,277.47 and it was sold to the carrier for the agreed price of $5,120,000. This charge to the carrier was partially met by its expenditures for new property for the Boston and Providence (Mass.) amounting to $4,810,752.66 and in payment of the subscription of the Boston and Providence (Mass.) to the stock of the terminal company, $100,000. If the Boston and Providence (Mass.) had reduced its account for investment in road and equipment by the original cost of the property retired from transportation uses, $829,277.47, instead of $209,247.34, as was done, and added to that account the expenditures made by the carrier in providing the entrance to the South Station, in lieu of the property retired, $4,810,752.66, the result
159 would have been an increase of $3,981,475.19, making the restated balance in the account for investment in road and equipment, $9,168,292.43.

In addition to the foregoing data obtainable from records supporting the content of its investment in road and equipment account, the Boston and Providence has filed with us a statement, in amount $22,308.63, claimed by it as expenditures charged to other accounts representing assessments for public improvements, which it claims should be considered in arriving at the original cost of the property.

Original Cost to Date.

The original cost to date, of all the property owned by the Boston and Providence (Mass.) and used for common-carrier purposes on the date of valuation had not been definitely ascertained. The accounting records of the

Seekonk Branch Railroad Company are not obtainable and, therefore, the original cost to date of demise can not be obtained for 0.379 mile of road and a depot and engine house, partially completed by that company. The available data for creating the remainder of the common-carrier property of the Boston and Providence (Mass.) and for improvements on the whole of the property, including outlay by the Boston and Providence (Mass.) the Old Colony Railroad and the carrier, for additions and betterments to property of the Boston and Providence (R. I.), which can not be separated, include the following:

By the Stoughton Branch Railroad Company:	
Recorded money outlay	$80,754.18
Short-term notes, at par value	125.82
Capital stock, at par value	8,000.00
By the Boston and Providence (Mass.):	
Recorded money outlay	4,903,752.95
Short-term notes, at par value	267,273.92
Notes receivable surrendered, at par value	15,496.20
Accounts payable	265,851.43
Unknown considerations recorded at	61,711.19
From which should be deducted the portions, not definitely ascertainable, that may be represented by—	
Property sold for proceeds of	635,307.43
Amount transferred by the Boston and Providence (Mass.)—to its equipment account, without explanation	121,324.41
Amount representing noncarrier property, which the Boston and Providence (Mass.)—transferred to its miscellaneous physical property account	77,573.98
Property surrendered to the carrier in part consideration for its expenditure of $4,810,752.66 in relocating the tracks of the Boston and Providence (Mass.)—to afford its entrance to the South Station in Boston, recorded as having cost	829,277.47
By the Old Colony Railroad, as lessee, for additions and betterments—	
Recorded money outlay	3,268,072.18
By the Providence and Worcester for road built and deeded to the Boston and Providence (R. I.):	
Recorded money outlay	370,403.47

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By the carrier:	
Relocating line of the Boston and Providence (Mass.)—within Boston, Mass., to reach tracks of The Boston Terminal Company—	
Recorded money outlay	4,810,752.66
Additions and betterments made by the carrier as lessee of the Boston and Providence (Mass.)—	
Recorded money outlay	2,264,602.12

These amounts include the recorded outlay of the constituent companies as hereinafter described, in lieu of the recorded purchase price of the property of those companies which appears in the books of the Boston and Providence (Mass.). The purchase price of the property of the Stough-

ton Branch Railroad Company is in the account of the Boston and Providence (Mass.) for investment in road and equipment as $85,400, paid in cash. The price of the Seekonk Branch Railroad Company is in the books of the Boston and Providence (Mass.) as $31,655.70, which was paid $10,412.50 in cash and $21,243.20 in notes. There is nothing included hereinbefore to represent the original cost of the property of the Boston and Providence (R. I.). The investment of the Boston and Providence (Mass.) in the stock of that company, $50,000 in cash and $100,000 in its own capital stock, has been omitted. If the outlay of the Boston and Providence (R. I.) for carrier property as shown in its books, and hereinafter described, be taken in connection with the cost of the road constructed by the Providence and Worcester, paid for by the Boston and Providence (Mass.), and entered in its account for investment in road and equipment, the following additions should be made to the amounts representing the several classes of outlay:

Cash	$104,780.52
Capital stock issued	1,425.00
Credits in open account (Boston and Providence (Mass.))	389,881.67
Credits in open account (Boston and Providence (R. I.))	29,193.94
Less real estate sold for considerations not definitely assignable to any of these classes of outlay	2,341.00

All of these sums were expended for road, as the Boston and Providence (R. I.) owned no equipment.

It is not known whether the retirement credited to the investment in road and equipment account cover- all property retired or abandoned. The outlays listed may include some of the costs of noncarrier land and some of the cost of partly carrier and partly noncarrier land, which are detailed hereinafter.

The following is in explanation of the items of outlay of the Old Colony Railroad and of the carrier, which are included in the above statement.

The total recorded net expenditures for equipment has been excluded, because the equipment has been transferred to the lessee and the appraised value thereof added to its account for investment in road and equipment. The amount transferred is the net amount of all of the entries in the account for investment in road and equipment described as relating to equipment and comprises the following:

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Total expenditures:		
Cash	$248,935.33	
Notes payable issued	48,150.00	
Accounts payable	20,566.97	
		$317,652.30
Amount transferred from road, without explanation		121,324.41
Charges not definitely described, account of missing records		46,397.02
Total		485,373.73
Less—		
Proceeds from sale of equipment		37,705.70
Credit entries made in the ledger in a period for which there are no supporting records		182,409.73
Total		220,115.43
Net total		265,258.30

This amount was increased by the following:

Debits:	
Transferred from operating expenses	$54,000.00
Adjustment in profit and loss to make the book cost equal the appraised value	663,834.35
Total debit	717,834.35
Credits:	
Adjustment in profit and loss for depreciation	111,858.30
Net debit	605,976.05
Amount transferred to lessee as value of equipment delivered under the lease	871,234.35

The Boston and Providence (Mass.) charged its account for investment in road and equipment with round sums purporting to represent the cost of building cars in its own shops and credited those sums to operating expenses. The amounts transferred—$20,000, $21,000, $6,000, and $7,000—total $54,000.

When the whole property was leased to the Old Colony Railroad, an appraisal of the equipment was made and the account increased by $663,834.35 to make the book value equal the total appraised value. The amount was credited to profit and loss. Before the entry was made the equipment was carried at $207,400, which had stood as the book cost since 1859.

The account for investment in road and equipment was reduced, and profit and loss credited, $111,858.30 as depreciation of equipment. The record does not show the basis for depreciation nor explain how this total was reached. The separate items are for 1844, $40,000; for 1845, $35,004.84; for 1851, $24,112.46; and for 1853, $11,741.

Under the terms of the lease which required the lessee

to make all additions and betterments to the property at its own expense the Old Colony Railroad expended $3,268,-072.18 and the carrier $2,264,602.12 for such purposes, but no record of these expenditures is written in the books of the Boston and Providence (Mass.).

The carrier has stated that the outlays of the Boston and Providence (Mass.) and the Boston and Providence (R. I.) are $59,313.91 for lands classified as noncarrier and $104,-927.38 classified as partly carrier and partly noncar-
162 rier. These amounts include $1,805.85 and $15,197.30, respectively, applicable to lands owned by the Boston and Providence (R. I.). Of the remainders, $57,508.06 and $89,730.08, respectively, the section of this chapter devoted to cost of lands shows $21,323.06 (comprising $18,-558.06 and $2,765) and $79,953.53 as supported by the accounting records, and $36,185 and $9,776.55 as not so supported. The portion of the cost of partly carrier and partly noncarrier lands, equitably assignable to the noncarrier uses of these lands, has not been determined.

When that amount is determined, in respect to the lands owned by the Boston and Providence (Mass.), the difference between the sum of it and the cost of lands classified as noncarrier, less the amount included in the account for investment in miscellaneous physical property which was not transferred from the account for investment in road and equipment, should be adjusted in the table of recorded outlay for carrier property; if the difference is greater than the amount heretofore transferred from the account for investment in road and equipment, the excess should be deducted from that table; if less, the amount by which it is less should be added to the table.

The amount, $77,573.98, transferred from the account for investment in road and equipment to the account for investment in miscellaneous physical property, may include some part or all of the amount $59,313.91, stated by the carrier in its protest to represent lands classified as noncarrier lands, but the record is not sufficient to show the identity of the lands included in the first-named amount.

Cost of lands.—The Boston and Providence (Mass.) reports the original cost of all lands and rights owned, on date of valuation, as $6,084,769.32. In verification, we have excluded a net amount of $1,357,835.83 as representing items not constituting land costs, as follows:

Additions:	
Sale of lands not allocated to particular parcels	$14,266.30
Deductions:	
Payments for materials taken for construction and operation of road	6,953.61
Payments for borrow-pit rights which have expired	325.00
Appraised value of lands and buildings acquired in exchange with the Boston and Albany Railroad company, Old Colony Railroad, and The Boston Terminal company for certain lands	1,351,581.58
Amounts named in deeds and condemnation awards returned in excess of recorded payments	2,261.76
Payments for lands not assignable to particular lands	10,980.18
Total	1,372,102.13
Net deduction	1,357,835.83

The return further includes costs of $2,185,548.61, representing expenditures for land, land damages, and expenses of grade-crossing eliminations.

The carrier has filed a claim for the Boston and Providence (Mass.) with our Bureau of Valuation, amounting to $736,455.59, in connection with the cost of grade-crossing elimination, which includes a part of the cost of lands returned by the company. If the original cost of the lands is used in lieu of the ascertained present value of lands, and the carrier's claim is included in the cost of re-
163 production new, there would be a duplication of some indeterminate part of the amount of that claim. For that reason this item is hereinafter classified and explained separately from the items for land concerning which no further explanations appear to be necessary.

After excluding the items listed the resulting balance of $2,540,384.88, made up in part of costs supported by accounting records and in part of substantial considerations recited in deeds and condemnation awards which the Boston and Providence (Mass.) claims to represent costs but which are not supported by accounting records, may be summarized as follows:

Classification.	Costs supported by accounting records.	Amounts not supported by accounting records.
As a whole		
Carrier lands wholly owned and leased to the carrier	$2,358,718.75	$33,280.49
Carrier lands jointly owned and leased to the carrier, portion of the Boston and Providence (Mass.)	127.50	.....
Rights in private lands, owned and leased to the carrier	1,020.00	.....
Noncarrier lands, wholly owned	18,558.06	36,185.00
Noncarrier lands, jointly owned portion of the Boston and Providence (Mass.)	2,765.00	.....
Lands classified partly as carrier and partly as noncarrier, owned	79,953.53	9,776.55
In Massachusetts		
Carrier lands wholly owned and leased to the carrier	2,349,175.90	27,132.93
Carrier lands jointly owned and leased to the carrier, portion of the Boston and Providence (Mass.)	127.50	.....
Rights in private lands, owned and leased to the carrier	420.00	.....
Noncarrier lands, wholly owned	18,558.06	50.00
Noncarrier lands, jointly owned, portion of the Boston and Providence (Mass.)	2,765.00	.....
Lands classified partly as carrier and partly as noncarrier, owned	79,953.53	9,776.55
In Rhode Island		
Carrier lands wholly owned and leased to the carrier	9,542.85	6,147.56
Rights in private lands, owned and leased to the carrier	600.00	.....
Noncarrier lands wholly owned	.....	36,135.00

The recorded cost of land and land damages incident to the elimination of grade crossings, hereinbefore referred to, was assumed by the respective participants as follows:

Boston and Providence (Mass.)	$1,381,985.94
State of Massachusetts	788,871.85
Various municipalities	15,690.82
Total	2,186,548.61

The proportion expended by the Boston and Providence (Mass.) has been verified in the accounting records, and consists of recorded money outlay classified as shown hereunder.

Carrier lands owned and used	$1,378,079.76
Noncarrier lands owned	36.02
Lands classified as partly carrier and partly noncarrier, owned	3,870.16
Total	1,381,985.94

The Boston and Providence (Mass.) has submitted a claim of $736,455.59 for consequential damages in connection with the elimination of grade crossings, which
164 it claims should be considered in the reproduction costs of its property. The claim has been classified as follows:

Items included in the land return	$826,687.34
Items not included in the land return	139,252.12
Total	965,939.46
Less amount allocated to other parties	229,483.87
Balance claimed by the Boston and Providence (Mass.)	736,455.59

Inasmuch as the total expenditures includes such a large proportion of items appearing in the land return the amount claimed as consequential damages must of necessity include an equal proportion of such items which, if allowed as part of the reproduction costs of the crossings would, to that extent, be a duplication of items included as part of the original cost of land, the total amount of which can not be definitely stated, if original cost of land is used in lieu of present value.

Cost of power-plant machinery.—The Boston and Providence returns $18,362, as cost of power-plant machinery. This amount represents the estimated cost of machinery located in the Back Bay power plant located at Boston, Mass., which estimated cost can not be verified from the accounting records.

Cost of equipment.—The Boston and Providence has not made return of equipment. As hereinbefore explained, the equipment of the Boston and Providence was delivered to the lessee under the lease. The carrier returns all equipment in use by it, including that delivered to it under terms of the lease, as its owned equipment.

Improvements on Leased Railway Property.

The lease agreement for the operation of the property of the Boston and Providence (R. I.) provides for improvements to be made by the lessee at its own expense, but the Boston and Providence (Mass.) has at no time maintained accounts showing separately the improvements made on this property. It is known that various sums have been expended in extensions and improvements to the property of the Boston and Providence (R. I.), which sums have been charged by the Boston and Providence (Mass.) to its own road and equipment account. None of the other agreements wherein the Boston and Providence (Mass.) was lessee provided for improvements to be made by it on the leased property, and no record has been found showing that any were made.

Miscellaneous Physical Property.

Since 1858, the Boston and Providence (Mass.) has maintained an account styled "Property Account—Houses, Land, Etc.," which it included as a part of its road and equipment account until September 30, 1888, after which date no entries have been posted thereto, and the Boston and Providence (Mass.) has classified the account in its reports and balance sheet statements as representing miscellaneous physical property. The balance in the account at September 30, 1888, and on date of valuation, was $77,573.98, which, with $4,609.96 carried in an account styled "Land in Canton," aggregates the balance sheet figure for miscellaneous physical property, $82,183.94. This account should be increased by the amount which represents the cost of the land held wholly for noncarrier purposes and by an unknown part of the cost of lands classified partly as carrier and partly as noncarrier.

165 The lands represented by the amount transferred from the account for investment in road and equip-

ment, $77,573.98, have not been identified in the company's return on the cost of its lands. However, certain lands, with costs of $57,508.06, owned by the Boston and Providence (Mass.) have been classified herein as noncarrier lands. This amount, with $1,805.85 representing lands classified herein as noncarrier lands, owned by the Boston and Providence (R. I.), $59,313.91 in all, may be included, in part or in whole in the amount $77,573.98 transferred from the account for investment in road and equipment. Other lands, with costs of $89,730.08 owned by the Boston and Providence (Mass.) have been classified herein as partly carrier and partly noncarrier lands, of which $79,953.53 is supported by the accounting records and $9,776.55 is not so supported.

The amount that would be includible in the miscellaneous physical property account to represent the investment in noncarrier lands was not fully determined.

Investments in Other Companies.

The Boston and Providence (Mass.) had, on date of valuation, investments in other companies of an aggregate par value of $579,800, which is carried at a book value of $337,519.42, as follows:

	Par value.	Book value.
Common stock of The Boston Terminal Company	$100,000.00	$100,000.00
Common stock of the Union Freight Railroad (Boston, Mass.)	143,500.00	79,014.42
Common stock of the Providence, Warren and Bristol	187,200.00	9,405.00
Preferred stock of the Providence, Warren and Bristol	149,100.00	149,100.00
Total	579,800.00	337,519.42

In addition, the Boston and Providence (Mass.) owns $150,000 par value, all of the outstanding capital stock of the Boston and Providence (R. I.), which it carried in its investment in road and equipment account.

The returns from these stocks accrue to the credit of the lessee under the terms of the lease. The stock of The Boston Terminal Company paid nothing, the Union Freight Railroad (Boston, Mass.) 7 per cent, and the Providence, Warren and Bristol 6 per cent in the year ended on date of valuation.

The result of acquiring, holding, and disposing of securities of other companies was a net loss of $82,236.73, as follows:

Premiums paid at purchase		$1,508.75
Losses on sales:		
Charged to profit and loss		100,590.06
Charged to operating expenses		1,350.00
Total		103,448.81
Less profits on sales:		
Credited to operating expenses	$13,235.29	
Credited to profit and loss	4,539.29	
Credited to operating expenses	3,437.50	
		21,212.08
Net losses		82,236.73

The Boston and Providence (Mass.) has reduced the value first ascribed to the securities held of the Providence, Warren and Bristol by the sum of $146,539.27, of which $126,634.27 was charged to profit and loss, $2,745 to operating expenses, and $17,160 to income by crediting the investment in road and equipment account with dividends received.

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By agreement of June 3, 1835, a part of the property of the Boston and Providence (R. I.) and, by supplemental agreement, the remainder of it, was turned over to the Boston and Providence (Mass.) for sole operation, the rent therefor to be "the same return upon its agreed value that the Boston and Providence (Mass.) might from time to time pay to its stockholders upon their investment." In 1846 the Boston and Providence (Mass.) acquired all of the capital stock of the Boston and Providence (R. I.), so that the process of paying rent became one of payment by the Boston and Providence (Mass.) as lessee, to itself, as sole shareholder of the capital stock of the lessor. Since 1863 no entries of this rent have been made in the accounting records of either company. The Boston and Providence (Mass.) maintained the property but made no separation in its accounting records of the investment in or the operation of the Boston and Providence (R. I.) property, prior to the lease to the Old Colony Railroad.

The Boston and Providence (Mass.) leased its railroad and equipment to the Old Colony Railroad for sole operation for a period of 99 years from April 11, 1888. The property leased includes the interest of the Boston and Providence (Mass.) and ownership of stock of other corporations and all dividends therefrom, and the Boston and

Providence (Mass.) turned over to the Old Colony Railroad its material and supplies, bills and accounts receivable, money and cash on hand to be by the lessee applied, at the value thereof to be fixed by appraisal, to the payment of a dividend of 5 per cent on the capital stock of the lessor and the payment of its outstanding liabilities. The lessor agreed to issue bonds for such sums as might be necessary to fund all its outstanding liabilities not thus paid. The lessee agreed to establish a sinking fund in the hands of trustees and to make such annual, or more frequent, payments thereto as may be necessary, with the accretions, to meet, during the term of the lease, all of the lessor's indebtedness. The lease provides that the securities assigned to the lessee may at any time be sold and transferred by the lessee, except the stock of the Boston and Providence (R. I.). That shall not be disposed of, and the stocks of the Union Freight Railroad and of the Providence, Warren and Bristol, if not sold, shall be returned to the lessor in such manner as to give it the same proportionate interest in and control over the present road and property of such corporations as the lessor then had.

According to the lease, the lessee was to pay each year, in quarterly payments, as follows: $400,000, equal to 10 per cent on $4,000,000 (the amount of the outstanding capital stock of the lessor), and during the first three years of the lease $10,000 per annum, and each year thereafter $3,000, for organization expenses (which latter sum was increased in 1898 to "not to exceed $5,000"), the lessee to furnish the officers of the lessor proper accommodations at the station of the lessor in Boston, pay the reasonable expenses of an annual inspection of the lessor's property, pay the lessor on May 1, 1888 a $1,300,000 cash bonus, and pay, as the same became due, the interest on the indebtedness of the lessor and upon any future indebtedness created for the purpose of paying such indebtedness, pay all taxes and assessments of every description, maintain the property, furnish necessary equipment additional to that owned by the lessor and make "all permanent improvements at its own expense, such improvements to become and remain the property of the lessor."

167 These obligations for the year ended on date of valuation, exclusive of taxes, maintenance, inspection, and improvements amounted to $400,000 as rental,

$3,000 as organization expenses, and $86,800, as interest on $2,170,000 funded debt at 4 per cent, making a total of $489,800.

Boston and Providence (R. I.).

Introductory.

By Rhode Island act of June 16, 1853, the Boston and Providence (R. I.) and the Boston and Providence (Mass.) were authorized to unite and form one corporation. To all intents and purposes, this was done, but the union had not been formally made, nor has the Commonwealth of Massachusetts authorized it. The Boston and Providence (R. I.) makes no report to us nor to the State of Rhode Island. The Boston and Providence (Mass.) includes the property of the Boston and Providence (R. I.) in its road and equipment account and makes no separation of the property, nor of the income therefrom, in its accounting records, and reports to us or to the Commonwealth of Massachusetts. The status of the Boston and Providence (R. I.) is that of a lessor company which has leased its whole property to the Boston and Providence (Mass.), which company, in turn, has assigned the lease to the Old Colony Railroad, which has assigned it to the carrier.

Corporate History.

The Boston and Providence (R. I.) is the successor to a single predecessor, named Boston and Providence Railroad and Transportation Company, which was incorporated by a special act of Rhode Island May 10, 1834. The Boston and Providence (R. I.) was incorporated by special act of Rhode Island June 15, 1853, under which the act of 1834 was amended to change the corporate name and to authorize a union with a Massachusetts corporation of the same name.

The Boston and Providence (Mass.) had been incorporated 1831, and authorized to construct a railroad from Boston, Mass., to the Rhode Island State line, and in May, 1834, appointed a committee to make application to the Legislature of Rhode Island to build into that State. The committee obtained a charter for that purpose, in the name of the Boston and Providence (R. I.). The two companies

were a part of one plan to establish railroad communication between Boston, Mass., and Providence, R. I.

Development of Fixed Physical Property.

The East Providence property of the Boston and Providence (R. I.), including the bridge over the Seekonk River, was built by the company's own forces and opened for operation about August, 1835. The property from the State line to Providence, via Boston Switch, was constructed by the Providence and Worcester in 1847. The Boston and Providence (Mass.) reimbursed the Providence and Worcester for what it had expended in constructing the property from Massachusetts State line to Boston Switch, R. I., and for one-half the amount expended in constructing the remainder from Boston Switch to Providence, R. I. In 1853, at the request of the Boston and Providence (Mass.), the Providence and Worcester conveyed to the Boston and Providence (R. I.) all of the property from the State line to Boston Switch, and an undivided one-
168 half interest in the remainder. The Boston and Providence (R. I.) wholly owns recorded road mileage as follows:

	Mileage.
Acquired by construction:	
East Providence, R. I., to property line of Boston and Providence (Mass.)	2.00
Acquired by purchase from the Providence and Worcester, constructed by that company, Massachusetts State line to Boston Switch, R. I.	.70
Total recorded mileage	2.70
Reduced by survey and remeasurement by	1.230
Total owned on date of valuation	1.470

In addition, the Boston and Providence (R. I.) owns an undivided half interest jointly with the Providence and Worcester in the following:

	Mileage.
Boston Switch to Providence, R. I.	4.75
Increased by survey and remeasurement	.220
Total jointly owned on the date of valuation	4.970

History of Corporate Financing.

Syndicating, banking and other financial arrangements.—Funds for capital requirements were obtained from the sale of capital stock and short-term notes and from advances by the Boston and Providence (Mass.). The

notes and the advances were retired by appropriations from income.

Capitalization.—The Boston and Providence (R. I.) issued and retired securities, leaving outstanding on date of valuation as follows:

	Issued	Retired.	Outstanding.
Capital stock	$150,000	.....	$150,000
Funded debt	18,000	$18,000	.....
Total	168,000	18,000	150,000

The considerations received for the stock issued were cash, $146,650; carrier property, $1,425; other property, $1,425; and notes receivable, $500. All of the stock was sold at par. By 1845 the Boston and Providence (R. I.) had reacquired $33,400 par of its own capital stock for which it gave $24,155 in cash and credited as part payment for hotel property sold $4,500. In 1846 it sold these shares to the Boston and Providence (Mass.) at par, and credited the difference, $4,745, to profit and loss. The Boston and Providence (R. I.) issued five-year bonds, dated September 1, 1837, to the amount of $18,000, all of which were sold for cash at par and retired at maturity by cash at par.

Short-term notes.—The Boston and Providence (R. I.) issued and retired short-term notes for considerations as follows:

Issued.	Consideration.	Retired.
$25,183	Cash	$42,183
17,000	Open account	
85,000	Renewals	85,000
127,183		127,183

169 By agreement dated June 3, 1835, between the Boston and Providence (Mass.) and the Boston and Providence (R. I.), a part of the property of the Boston and Providence (R. I.) and, by supplemental agreements, the remainder of it, was turned over to the Boston and Providence (Mass.) for sole operation. In 1846 the Boston and Providence (Mass.) acquired all of the capital stock of the Boston and Providence (R. I.). Thereafter the Boston and Providence (R. I.) ceased to receive any income other than the rent paid by the Boston and Providence (Mass.) and, as the Boston and Providence (Mass.) owned all of the capital stock of the Boston and Providence

(R. I.), the process of paying became one of the lessee paying to itself, as sole stockholder of the lessor. Entries covering the rent received and the dividends paid were continued until August, 1863; after that time no entries of any sort were made in the accounting records of the Boston and Providence (R. I.).

Income account.—The income account of the Boston and Providence (R. I.) for the period from beginning of operations to August 31, 1863, follows:

Operating income:		
Railway operating expenses		$19,671.34
Railway tax accruals		1,710.58
Railway operating revenue—deficit		21,381.92
Nonoperating income:		
Income from lease of road	$203,174.22	
Miscellaneous rent income	55,296.01	
Dividend income	6,628.00	
Income from unfunded securities and accounts	6,501.90	
Miscellaneous income	3,779.00	
		275,379.13
Gross income		253,997.21
Deductions from gross income:		
Interest on funded debt	5,751.63	
Interest on unfunded debt	2,724.64	
		8,476.27
Net income		245,520.94
Disposition of net income:		
Dividend appropriations of income		195,279.50
Balance transferred to credit of profit and loss		50,241.44

The item of "railway operating expenses" consisted of maintenance and repairs of buildings, docks, and wharves to 1838, inclusive, the income from which property is shown under the heading of miscellaneous rent.

Profit and loss.—It was agreed between the Boston and Providence (Mass.) and the stockholders of the Boston and Providence (R. I.), whose shares it purchased in 1846, that all of the capital stock of the Boston and Providence (R. I.) should thereafter represent the ownership and control of only that part of the property of the Boston and Providence (R. I.) then leased to the Boston and Providence (Mass.), the remainder of the property, or the proceeds from its sale, to be distributed among the retiring stockholders.

The accounting records of the Boston and Providence (R. I.) do not disclose exactly what the miscellaneous prop-

erty was, nor what was done with it, but it seems certain that it is not now owned or used by the Boston and Providence (R. I.) or the Boston and Providence (Mass.). In 1846 the Boston and Providence (R. I.) reduced the balance in its property investment account by the sum
170 of $27,379.61, which sum was charged to profit and loss, and in the same year it also charged profit and loss with a "special dividend of all personal effects of this company," $37,203.37. When these entries had been made the profit and loss account stood balanced and closed, indicating that the amount entered as a dividend of "all personal effects of the company" was not the actual amount of property distributed, but that the amount of the entry was fixed at a sum equal to the credit balance in the profit and loss account. The considerations received by the stockholders of the Boston and Providence (R. I.) for their shares was at the rate of par, payable $100,000 in the capital stock of the Boston and Providence (Mass.), at par, and $50,000 in cash. At that time the Boston and Providence (R. I.) held 334 shares of its own capital stock, and the stockholders held 1,166 shares. From the funds received from the sale of its treasury stock, the Boston and Providence (R. I.) purchased and gave to its stockholders 166 shares of the capital stock of the Boston and Providence (Mass.) which, with the 1,000 shares received by exchange, enabled these stockholders severally to own the same number of shares in the Boston and Providence (Mass.) that they had formerly held in the Boston and Providence (R. I.). The Boston and Providence (R. I.) paid a premium of $1,577 for the Boston and Providence (Mass.) shares purchased, which sum was charged to profit and loss.

The profit and loss account for the period from beginning of operation to August 31, 1863, as shown by records of the Boston and Providence (R. I.) is as follows:

Credits:	
Credit balances transferred from income	$50,241.44
Delayed income credits	14,524.74
Miscellaneous credits—	
Profit on sale of 334 shares of treasury stock	4,745.00
Charged to investment in road and equipment without explanation	1,648.29
Total	71,159.47

Debits:		
Dividend appropriation of surplus		37,203.37
Miscellaneous debits—		
Loss on sale of investment securities	$654.17	
Loss on road and equipment retired	2,252.80	
Premium over par paid for 166 shares of capital stock of Boston and Providence (Mass.)	1,577.00	
Uncollectible accounts charged off	2,092.52	
Reduction in book value of real estate without explanation	27,379.61	
		33,956.10
Total		71,159.47

Investment in Road and Equipment

The investment in road and equipment, including land, on date of valuation is stated in the books of the Boston and Providence (R. I.) to be $150,000, made up as follows:

Road:		
Book cost of real estate	$53,577.38	
Book cost of road and appurtenances	79,481.08	
		$133,058.46
171		
Other items:		
Debits—		
Amount charged to road and credited to profit and loss without explanation	$1,648.29	
Amount charged to road for purchase, maintenance, and operation of hotel	67,511.56	
Total	69,159.85	
Credits—		
Amount received from the Boston and Providence (Mass.) for cancellation of contract relative to operation of hotel $20,000.00		
Less amount credited to other accounts 2,327.97		
	17,672.03	
Amount credited to road for capital stock received in sale of hotel property	7,166.67	
Amount credited to road and charged to profit and loss without explanation	27,379.61	
Total	52,218.31	
		$16,941.54
Balance in account on date of valuation		150,000.00

If the items called "other items," a net debit of $16,941.54, be omitted as not being properly included in the account of investment in road and equipment, the amended

balance will be $133,058.46. As nearly as it may be stated from the records, this balance represents:

Recorded money outlay	$110,888.77
Capital stock issued, par value	1,425.00
Credits in open accounts	29,193.94
From which should be deducted the portions, not definitely ascertainable, that may be represented by—	
Property sold for cash	6,108.25
Property sold for considerations	2,341.00

The carrier has stated that the outlays of the Boston and Providence (R. I.) and Boston and Providence (Mass.) are $59,313.91 for lands classified as noncarrier and $104,927.38 for lands classified as partly carrier and partly noncarrier. These amounts include $57,508.06 and $89,730.08, respectively, applicable to lands owned by the Boston and Providence (Mass.). Of the remainder, $1,805.85 and $15,197.30, respectively, the chapter on original cost to date shows $1,471.26 and $15,147.30 (comprising $13,916.20 and $1,231.10) as supported by the accounting records, and $334.59 and $50 as not so supported. The portion of the cost of partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

When that amount is determined in respect to the lands owned by the Boston and Providence (R. I.), the difference should be adjusted in the accounts for investment in road and equipment and miscellaneous physical property.

The amount $77,573.98, transferred from the account for investment in road and equipment to the account for investment in miscellaneous physical property by the Boston and Providence (Mass.) may include some part or all of
172 the amount $59,313.91 stated by the carrier to represent lands classified as noncarrier lands, but the record is not sufficient to show the identity of the lands included in the first-named amount, $77,573.98.

The original cost to date of all the property owned by the Boston and Providence (R. I.) and used on date of valuation for the purposes of a common carrier can not be stated from the records. The accounts provided in its books to show the expenditures for such property have received no entries since 1846. The property has been in the control of the Boston and Providence (Mass.) and succeeding lessees since it was opened for operation, and since 1846 the Boston and Providence (Mass.) has been the sole stockholder and

sole creditor. The road built by the Providence and Worcester for the Boston and Providence (R. I.) and that built for the joint account of those two, were paid for by the Boston and Providence (Mass.), and although the title to the new road was conveyed to the Boston and Providence (R. I.), no entries were made in its accounts to show the cost. The records of the Boston and Providence (Mass.) show that it paid to the Providence and Worcester $389,881.67 for about 0.7 mile and for an undivided half interest in about 4.75 miles, which were conveyed to the Boston and Providence (R. I.). In the records of the Providence and Worcester this appears as $370,403.47, but no explanation of the difference can be given. Whatever the Boston and Providence (Mass.) has expended for additions and betterments to the property of the Boston and Providence (R. I.) has been charged by the former to its own account for investment in road and equipment and can not now be identified. Whatever may have been spent upon the property by the succeeding lessee, the Old Colony Railroad, and the carrier, has been recorded as spent upon the Boston and Providence without distinction between the two corporations. In that part of this report relating to the Boston and Providence (Mass.) a statement of the cost of the combined property is made, but here it is possible to show only the outlay of the Boston and Providence (R. I.) for carrier property recorded in its books to and including 1846, which is summarized as follows:

Recorded money outlay	$110,888.77
Capital stock issued, par value	1,425.00
Credits in open accounts	29,193.94
From which should be deducted the portions, not definitely ascertainable, that may be representd by—	
Property sold for cash	6,108.25
Property sold for considerations	2,341.00

The outlays by the Boston and Providence (R. I.) may include some of the costs of noncarrier lands and some of the cost of partly carrier and partly noncarrier lands, which are detailed hereinafter.

The carrier has stated that the outlays of the Boston and Providence (R. I.) and the Boston and Providence (Mass.) are $59,313.91 for lands classified as noncarrier lands and $104,927.38 for lands classified as partly carrier and partly noncarrier. These amounts include $57,508.06 and $89,-

730.08, respectively, applicable to lands owned by the Boston and Providence (Mass.). Of the remainders, $1,805.85 and $15,197.30, respectively, the section of this chapter devoted to cost of lands, shows $1,471.26 and $15,147.30 (comprising $13,916.20 and $1,231.10) as supported by the accounting records, and $334.59 and $50 as not so supported.

173 The portion of the cost of partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

The amount $77,573.98, transferred from the account for investment in road and equipment to the account for investment in miscellaneous physical property by the Boston and Providence (Mass.) may include some or all of the amount, $59,313.91, stated by the carrier, in its protest, to represent lands classified as noncarrier lands, but the record is not sufficient to show the identity of the lands included in the first-named amount, $77,573.98.

Cost of lands.—The Boston and Providence (R. I.) reports the original cost of all lands owned, on date of valuation, including both carrier and noncarrier lands, as $429,516.94. In verification a net deduction of $17,395.38 was made, consisting of addition of $203.75, representing amount received from sales which can not be allocated to particular lands, and the deduction of $17,599.13, representing payments not assignable to particular lands. After making the changes noted, the resulting balance of $412,121.56, made up in part of costs supported by accounting records and in part of substantial deed considerations which the company claims to represent costs but which are not supported by accounting records, may be summarized as follows:

Classification.	Costs supported by accounting records.	Amounts not supported by accounting records.
Carrier lands wholly owned and leased to the carrier	$322,625.39	$1,381.45
Carrier lands jointly owned and leased to the carrier, portion of the Boston and Providence (R. I.)	70 939.21	172.36
Noncarrier lands; jointly owned, portion of the Boston and Providence (R. I.)	1,471.26	334.59
Lands classified partly as carrier and partly as noncarrier, wholly owned	13,916.20	.....
Lands classified partly as carrier and partly as noncarrier, jointly owned; portion of the Boston and Providence (R. I.)	1,231.10	50.00

It will be noted that the land costs supported by accounting records exceed the total investment in road and equipment as shown by the balance sheet, and likewise exceed the total outlays for property hereinbefore stated. The above statement of land costs is a combination of the costs of the land acquired by the Boston and Providence (R. I.) as shown by its books and of that acquired in the name of the Boston and Providence (R. I.) by the Boston and Providence (Mass.) and charged in the books of the latter.

Miscellaneous Physical Property.

The accounts of the Boston and Providence (R. I.) do not record, as such, any investment in miscellaneous physical property on date of valuation.

The lands, represented by the amount $77,573.98, transferred from the account for investment in road and equipment by the Boston and Providence (Mass.) have not been identified in the company's returns on the cost of its lands.

However, certain lands, with costs of $1,805.85, owned by the Boston and Providence (R. I.) and charged to its account for investment in road and equipment have been classified herein as noncarrier lands. This amount, with $57,508.06 representing lands classified herein as noncarrier lands, owned by the Boston and Providence (Mass.) $59,313.91 in all, may be included in part or in whole in the amount $77,573.98 transferred from the account for investment in road and equipment by the Boston and Providence (Mass.).

Other lands, with costs of $15,197.30 owned by the Boston and Providence (R. I.) and charged to its account for investment in road and equipment, have been classified herein as partly carrier and partly noncarrier lands.

174 A statement in detail follows:

	Costs supported by accounting records.	Costs not supported by accounting records.
Lands classified as partly carrier and partly noncarrier, owned, leased to the carrier.....	$13,916.20	.....
Lands classified as partly carrier and partly noncarrier; jointly owned, portion of the Boston and Providence (R. I.) leased to carrier.....	1,231.10	$50.00

The amount that would be includible in the miscellaneous physical property account to represent the investment in noncarrier lands was not indicated by the records reviewed.

Leased Railway Property.

On June 3, 1835, the Boston and Providence (R. I.) leased to the Boston and Providence (Mass.) in perpetuity its bridges at India Point, the road therefrom within the city of Providence, depots, engine houses, etc., "of a value to be determined by the parties, said value to become the basis upon which rentals should be paid equal to the rate of profit which may be annually divided by the Boston and Providence (Mass.) among the holders of its capital stock, payable at the same period at which such dividends are paid." The lessee agreed to maintain the property and pay all expenses arising from its use and occupation. Subsequently improvements and betterments were made and the cost thereof included in the agreed value, which was finally fixed at $150,000. The Boston and Providence (Mass.) acquired all of the capital stock of the Boston and Providence (R. I.), and, therefore, was the beneficiary of any leased payments by itself to the Boston and Providence (R. I.) under the lease. Later the Boston and Providence (Mass.) leased its whole property to the Old Colony Railroad, which, in turn, assigned the lease to the carrier.

Providence, Warren and Bristol.

All of the records of the predecessors of the Providence, Warren and Bristol were missing and no information concerning them was obtained. The accounting records of the Providence, Warren and Bristol prior to November 30, 1855, were not obtainable.

Corporate History.

The following chart shows the names of the corporations, the respective dates of incorporation, and for each predecessor the date of succession, immediately succeeding corporation, and the manner of succession. Reference to each of these corporations is made in the last column by its respective number shown in the first column.

No.	Name.	Incorporation.	Succession.
1	Providence, Warren and Bristol Railroad Company.	Nov. 16, 1854.	
2	Providence, Warren and Bristol Railroad Company (R. I.).	See 3.....	United with 4 to form 1, June 25, 1852.
3	Providence and Bristol Railroad Company (R. I.).	In Rhode Island, Nov. 1, 1850.....	Name changed to 2, June 25, 1852.
4	Providence, Warren and Bristol Railroad Company (Mass.).	See 5.....	United with 2 to form 1, Nov. 16, 1854.
5	Providence and Bristol Railroad Company (Mass.).	In Massachusetts, May 23, 1851.....	Name changed to 4, Mar. 24, 1853.

175 The union had been authorized in the act of incorporation of the Providence and Bristol Railroad Company (R. I.) and the Providence and Bristol Railroad Company (Mass.).

Development of Fixed Physical Property.

On date of valuation the Providence, Warren and Bristol owned 14.419 miles of railroad, extending from India Street, in Providence, to Bristol, R. I. The road, which was acquired by construction and opened for operation on July 12, 1855, originally extended from Providence, R. I., through the town of Seekonk, Mass. (now East Providence, R. I.) to Bristol, R. I. In 1862 the State line between Massachusetts and Rhode Island was changed, and since then the property owned by the Providence, Warren and Bristol has been located entirely in Rhode Island.

History of Corporate Financing.

The Providence, Warren and Bristol has issued and retired and had outstanding on date of valuation, securities as shown in schedule following:

	Issued.	Retired.	Outstanding.
Common stock	$724,000.00	.....	$724,600.00
Preferred stock	150,000.00	.....	150,000.00
Funded debt	250,000.00	$250,000.00	.....
Nonnegotiable debt	352,397.30	.....	352,397.30
Total	1,476,997.30	250,000.00	1,226,997.30

The considerations received for the above $1,476,997.30 issued were as follows:

Par value issued.	Consideration.	Recorded value.
$122,800.59	Cash	$123,393.08
58,000.00	Notes payable retired	58,000.00
1,387.59	Notes receivable	1,387.59
437,300.00	Cash expenditures by carrier for additions and betterments	655,950.00
23,758.20	Construction of road	23,758.20
3,689.74	Equipment purchased	3,689.74
37,203.88	Settlement of open accounts	37,203.88
100,000.00	Mortgage bonds retired	100,000.00
38,617.77	Short-term notes retired	38,617.77
313,779.53	Construction expenditures by carrier	313,779.53
	Total recorded value	1,355,779.79

340,460.00	No considerations of record	340,460.00
1,476,997.30	Total par value issued.	
218,650.00	Premium on capital stock credited to premium on capital stock account.	
617.49	Forfeited subscriptions to capital stock, credited to profit and loss.	
	Discount on bonds charged to profit and loss..	25.00
1,696,264.79		1,696,264.79

The $250,000 of securities retired were reacquired at face value for $145,000 cash, $5,000 of notes payable, and $100,000 of preferred stock.

176 *Short-term notes.*—From date of incorporation to date of valuation the Providence, Warren and Bristol issued and retired short-term notes for considerations as follows:

Issued.	Consideration.	Retired.
$200,702.46	Cash	$241,875.34
40,572.77	Construction	6,712.63
483.46	Equipment	.....
438.32	Repairs of road	.....
5,000.00	Mortgage bonds	37,000.00
89,775.51	Settlement of open accounts	38,093.00
	Preferred stock	21,000.00
	Nonnegotiable debt to affiliated company	38,617.77
	Notes receivable surrendered	8,538.78
54,865.00	Considerations not of record	.....
391,837.52		391,837.52

Results of Corporate Operations.

Income account.—The income account of the Providence, Warren and Bristol for the period from July 12, 1855, to date of valuation, is stated as follows:

Operating income:	
Railway operating revenues	$3,180,264.89
Railway operating expenses	2,594,402.53
Net revenue from railway operation	585,862.36
Railway tax accruals and insurance	84,554.08
Railway operating income	501,308.28
Nonoperating income:	
Hire of equipment	5,636.93
Income from lease of road	767,667.98
Miscellaneous rent income	15,645.21
Income from unfunded securities and accounts	19,432.89
Total	808,383.01
Gross income	1,309,691.29

Deductions from gross income:	
Hire of equipment	21,795.38
Miscellaneous rents	12,229.66
Interest on funded and unfunded debt	162,025.42
Maintenance of investment organization	562.51
Total	196,612.97
Net income	1,113,078.32
Disposition of net income:	
Dividend appropriations of income	898,927.76
Income balance transferred to credit of profit and loss	214,150.56

177 Included in the investment in road and equipment account are charges of $24,178.58 for repairs to property damaged by flood, and $25,343.16 for dividends. If these items, together with delayed income charges of $6,762.80 in the profit and loss account, were transferred to income, the credit balance in the latter account would be reduced to $157,866.02.

Profit and loss account.—The profit and loss account for the period from July 12, 1855, to date of valuation, as shown by records of the Providence, Warren and Bristol, is as follows:

Credits:	
Credit balances transferred from income	$214,150.56
Remuneration account hereinafter explained	199,823.45
Total	413,974.01
Debits:	
Dividend appropriations of surplus	68,175.08
Delayed income debits—	
Joint-facility rents	6,762.80
Miscellaneous debits—	
Land damages	750.00
Uncollected accounts written off	7,341.66
Reduction in investment in road and equipment in 1880 to make the balance agree with the amount of capital securities outstanding at that date	306,987.46
Credit balance on date of valuation	23,957.01
Total	413,974.01

If the credit balance from income should be adjusted to $157,866.02, as previously explained; if the sum of $29,-919.93, representing the balance in the Neptune Steamship Company's account, which was credited to investment in road and equipment, and a charge to that account of $45 for equipment retired, were transferred here; and if the charge of $306,987.46, as stated above, were reversed, the credit balance in the profit and loss account would be increased to $311,297.66.

Investment in Road and Equipment.

The investment in road and equipment, including land, on date of valuation, is stated in the books of the Providence, Warren and Bristol to be $1,467,140.09, made up as follows:

	Road	
Balance at Nov. 30, 1855 (no details)		$396,288.16
Additions and betterments by the Providence, Warren and Bristol:		
Money outlay	$236,146.59	
Notes payable	40,572.77	
Capital stock	1,440.00	
Funded debt	22,318.20	
	300,477.56	
Less cash proceeds from sale of land	7,138.17	
		293,339.39
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Paid to reimburse the carrier for expenditures for additions and betterments:		
Capital stock, $437,300 par value, issued at an agreed value of	$655,950.00	
Demand note at par value of	313,779.53	
	969,729.53	
Less nonnegotiable debt of the carrier to the Providence, Warren and Bristol, being the excess credited to the Providence, Warren and Bristol in the accounts of the carrier, of the above considerations over the amount with which the carrier charged the Providence, Warren and Bristol for the additions and betterments in question	13,549.44	
		956,180.09
Other items:		
Credits—		1,645,807.64
Balance in account with Neptune Steamship Company written off in 1867	29,919.93	
Reduction investment account to make balance equal in par value of capital securities outstanding in 1880	306,987.46	
Total	336,907.39	
Debits—		
Recorded value of equipment transferred to the Old Colony Railroad, as hereinafter explained	95,123.66	
Unexpended amount paid to the carrier for construction, as hereinafter explained	13,549.44	
Repairs to road and equipment damaged by flood in 1869	24,178.58	
Services of appraisers for equipment retired	45.00	
Dividend on capital stock	25,343.16	
Total	158,239.84	
Net credits		178,667.55
Total recorded as of date of valuation		1,467,140.09

When the Providence, Warren and Bristol leased its property to the Old Colony Railroad, the former's equipment was transferred to the latter at an appraised value of $92,417. Later the carrier assumed this amount as a liability to be settled at termination of the lease and charged same to its investment in road and equipment account. It would therefore appear that the Providence, Warren and Bristol should deduct its recorded value of equipment, $95,123.66, from its investment in road and equipment account and set up the appraised value as a deferred asset to be settled at termination of the lease.

179 The Providence, Warren and Bristol has charged its investment account with the sum of $969,729.53, purporting to be cash expenditures by the carrier for additions and betterments. In payment therefor the Providence, Warren and Bristol issued to the carrier $437,300 par value of its capital stock at 150, or at a premium of $218,650, and a demand note for $313,779.53. According to the accounting records of the carrier, that company expended $956,573.53 for additions and betterments to the property of the Providence, Warren and Bristol. Of this amount, $956,180.09, was charged to the Providence, Warren and Bristol in open account and $398.44 was charged to income. The carrier has given the Providence, Warren and Bristol credit in its accounts for $13,549.44, the difference between the $956,180.09 charged to the Providence, Warren and Bristol and the $969,729.53 paid by that company in stocks and notes, but the Providence, Warren and Bristol has not recorded the difference in question in its accounts.

If the "other items" were eliminated from the investment in road and equipment account of the Providence, Warren and Bristol, and the remaining items were taken at their recorded values, the balance in that account would be increased to $1,645,807.64, representing investment in road only.

This balance, as adjusted, would, so far as it is resolvable into its constituent elements, comprise the following classes of outlay:

Balance at Nov. 30, 1855, considerations not of record	$396,288.16
Recorded money outlay	236,146.59
Short-term notes at par value	354,352.30
Capital stock at par value	1,440.00
Capital stock, $437,300 par value, issued at an agreed value of	655,950.00
Funded debt at par value	22,318.20
Less the portions, not definitely ascertainable, that may be represented by—	
Land sold for proceeds of	7,138.17
Nonnegotiable debt of the carrier to the Providence, Warren and Bristol	13,549.44

The carrier has stated that the foregoing outlays include $7,000 as the cost of certain lands classified herein as noncarrier lands and $41,843.96 as partly carrier and partly noncarrier. The chapter on original cost to date shows these amounts as supported by the accounting records. The portion of the cost of partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

In addition, the profit and loss account contains a charge of $750 for land damages. It is not known what part, if any, of this amount applied to outlay which would be chargeable to the investment in road and equipment account under the present accounting classification, and the amount has not been added to the balance in the road and equipment account. On the other hand, it is not known whether the retirements credited to the investment in road and equipment account cover all property retired or abandoned.

The outlays by the Providence, Warren and Bristol may also include some of the cost of lands classified partly as carrier and partly as noncarrier, for which it claimed, in its return, $41,843.96 of costs, all supported by accounting records, while it set up no separate account for miscellaneous physical property.

In addition to the foregoing data obtainable from records supporting the content of its investment in road and equipment account, the Providence, Warren and
180 Bristol has filed with this commission a statement, in amount $733.51, claimed by it as expenditures charged to other accounts representing assessments for public improvements which it claims should be considered in arriving at the original cost of its property.

Original Cost to Date.

The original cost to date of all common-carrier property owned by the Providence, Warren and Bristol cannot be ascertained from the records that are obtainable. The recorded outlay for the road, including land, to date of valuation, is as follows:

Recorded money outlay:		
By the Providence, Warren and Bristol	$236,146.59	
By the carrier	956,573.53	
By the Old Colony Railroad and charged to its improvement on leased railway property account	113,123.64	
		$1,305,843.76
Short-term notes at par value		40,572.77
Capital stock at par value		1,440.00
Funded debt at par value		22,318.20
Other considerations		396,288.16
(Balance from ledger not available.)		
Less the portions, not definitely ascertainable, that may be represented by land sold for proceeds of		7,138.17

In addition to the above, the Providence, Warren and Bristol charged profit and loss with $750 for land damages. It is not known what part, if any, of this amount applied to outlay which would be chargeable to the investment in road and equipment account under the present accounting classification, and the amount has not been included in the above outlays. On the other hand, it is not known whether the retirements credited to the investment in road and equipment account cover all property retired or abandoned.

The outlays listed may include some of the cost of lands classified partly as carrier and partly as noncarrier, for which it claimed, in its return, $41,843.96 of costs supported by accounting records, while it set up no separate accounts for miscellaneous physical property.

The carrier has stated that the foregoing outlays include $7,000 as the cost of certain lands classified herein as noncarrier lands and $41,843.96 for lands classified as partly carrier and partly noncarrier. The section on lands shows these amounts as supported by the accounting records. The portion of the cost of partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

Cost of lands.—The Providence, Warren and Bristol reports the original cost of all lands and rights owned, in-

cluding carrier and noncarrier lands, as $179,428.22. The return includes $2,537.87 representing expenditures for construction material other than land. The return also includes $700 of costs that cannot be allocated. As the Providence, Warren and Bristol has returned certain lands with costs as cited in deeds and condemnation awards, the costs of which cannot be identified in the accounts, it is probable that the $700 referred to are included in these considerations, and, therefore, duplicated in the return. Excluding these two amounts, for the reasons stated, the return would show $176,190.35 of costs which, after verification, may be classified as follows:

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Classification	Costs supported by accounting records	Amounts not supported by accounting records
Carrier lands, owned and leased to the carrier	$107,205.21	$20,041.18
Rights in private lands, owned and leased to the carrier	100.00	.....
Noncarrier lands owned	7,000.00	.....
Lands classified partly as carrier and partly as noncarrier, owned	41,843.96	.....

Cost of machinery.—The Providence, Warren and Bristol returned $400,473 costs of power-plant machinery, which, after verification, may be classified as follows:

Classification.	Costs supported by accounting records.	Amounts not supported by accounting records.
Power-plant machinery	$232,710	$75,310
Power-substation apparatus	72,460	19,993
Total	305,170	95,303

Miscellaneous Physical Property.

The accounts of the Providence, Warren and Bristol do not record, as such, any investment in miscellaneous physical property on date of valuation. However, certain lands with costs of $7,000 owned by the Providence, Warren and Bristol and charged to its account for investment in road and equipment, have been classified herein as noncarrier lands.

Other lands with costs of $41,843.86, supported by accounting records, owned by the Providence, Warren and Bristol and charged to its account for investment in road and equipment, have been classified herein as partly carrier and partly noncarrier, as follows:

Lands classified as noncarrier, owned, leasd to the carrier.....	$7,000.00
Lands classified as partly carrier and partly noncarrier.....	41,843.96

The amount that would be includible is the miscellaneous physical property accounts to represent the investment in noncarrier lands has not been fully determined.

Leased Railway Property.

Prior to February 1, 1860, the property of the Providence, Warren and Bristol was operated by the Boston and Providence, and from the above date to July 1, 1891, by the Providence, Warren and Bristol. On the latter date the Old Colony Railroad leased the property for a period of 95 years and 9 months, and continued operations until March 1, 1893, when it transferred the lease to the carrier. The details of the lease have been hereinbefore explained, in the report on the carrier.

Harlem River and Port Chester.

Development of Fixed Physical Property.

The railroad of the Harlem River and Port Chester extends from the Harlem River to New Rochelle, N. Y. Construction work was begun about 1870 and two main tracks were opened for operation November 24, 1873. In
182 1889 third and fourth tracks were started, but before they were finished the plans were changed to provide for six tracks. These were completed March 3, 1912. In October 1910 work was begun to equip the road for electrical operation, but on date of valuation this was not completed for all tracks. On date of valuation the road mileage was 11.217 miles.

History of Corporate Financing.

Syndicating, banking and other financial arrangements.—All financing of the Harlem River and Port Chester, with the exception of $42,550 received for capital stock, was accomplished through the carrier.

Capitalization.—The Harlem River and Port Chester issued and retired, leaving outstanding on date of valuation, securities as follows:

	Issued.	Retired.	Outstanding.
Capital stock	$1,000,000.00		$1,000,000.00
Funded debt	16,305,250.00	$3,305,250.00	13,000,000.00
Short-term notes	42,270,035.95	27,270,035.95	15,000,000.00
	59,575,285.95	30,575,285.95	29,000,000.00

In addition, the Harlem River and Port Chester received advances from the carrier in the amount of $26,306,905.68, all of which were discharged prior to date of valuation. The recorded considerations received for capital stock and funded debt were:

Par value issued.	Considerations.	Recorded value.
$42,550.00	Cash	$42,550.00
3,957,450.00	Advances by the carrier	3,953,121.25
305,250.00	Construction	305,250.00
13,000,000.00	Retirement of notes	13,000,000.00
	Total recorded value	17,300,921.25
	Discount on $1,000,000 par of first-mortgage bonds (charged to investment in road and equipment)	4,328.75
17,305,250.00	Total	17,305,250.00

The funded debt outstanding on date of valuation consists of a single issue of 15-year prior lien 5 per cent bonds, dated May 1, 1915, of par value $13,000,000.

Short-term notes of face value $15,000,000 were outstanding on date of valuation. The considerations received at issue and given in retirement are shown in the following schedule:

Received at issue.	Considerations.	Given in retirement.
$25,213.27	Cash.	
5,891,038.25	Construction.	
22,353,784.43	Advances	$1,270,035.95
1,000,000.00	Funded debt	13,000,000.00
13,000,000.00	Renewals	13,000,000.00
	Total retirements	27,270,035.95
	Outstanding	15,000,000.00
42,270,035.95	Total issued	42,270,035.95

Advances.—The considerations for advances made and discharged were as follows:

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Advances made.	Considerations.	Discharged.
$23,036,869.73	Cash.	
1,000,000.00	Funded debt	$1,000,000.00
1,000,000.00	Registered bonds	1,000,000.00
1,270,035.95	Notes payable	22,353,784.43
	Funded debt ($1,000,000) issued	995,671.25
	Capital stock issued	957,450.00
26,306,905.68	Total	26,306,905.68

Contingent liability.—The property of the Harlem River and Port Chester is pledged to secure $15,000,000 first-mortgage 30-year 4 per cent bonds issued by the lessee, May 1, 1904. The Harlem River and Port Chester joined in the mortgage and the bonds issued thereunder are its contingent liability. The balance sheet of the Harlem River and Port Chester does not show this.

Results of Corporate Operations.

The Harlem River and Port Chester has had no income except that from lease of road, which amount was paid out by the lessee in dividends and interest credited to it. The total rental credited for the year ended on date of valuation and for the period from June, 1868, to date of valuation, was disposed of as follows:

	Year.	Period.
Income from lease of road	$1,345,000.00	$11,940,630.16
Interest on funded debt	108,333.34	5,045,027.31
Interest on unfunded debt	1,166,666.66	6,001,319.05
Total	1,275,000.00	11,046,346.36
Net income	70,000.00	894,283.80
Dividend appropriations of income	70,000.00	894,283.80

There is no complete statement of income in the records of the Harlem River and Port Chester. The details above shown are taken from the books of the carrier. The records do not show how the cost of maintaining the organization is met.

As all the income is charged through the income account as interest and dividends, there is no profit and loss account.

Investment in Road and Equipment.

On date of valuation the balance in the investment in road and equipment account of the Harlem River and Port Chester amounted to $28,984,969.75, as follows:

Road:	
For cash	$20,767,313.28
For funded debt	305,250.00
For notes payable	5,161,920.41
Discount on bonds	4,328.75
Total	26,238,812.44
Less cash from property sold	603,087.24
Total	25,635,725.20

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Equipment:	
For cash	2,650,359.77
For notes payable	29,117.84
Total	3,379,477.61
Less cash from property sold	30,233.06
Net total	3,349,244.55
Total, road and equipment	28,984,969.75

If the item of $4,328.75 for discount on bonds be deducted as not a proper charge to the investment account, and the net amount included for equipment, $3,349,244.55, be omitted, because the equipment has been transferred to the lessee, as hereinafter explained, and if the remaining items were taken at their recorded values, the balance in that account would be reduced to $25,631,396.45, representing investment in road only.

This balance, as adjusted, would, so far as it is resolvable into its constituent elements, comprise the following classes of outlay:

Recorded money outlay	$20,767,313.28
Short-term notes at par value	5,161,920.41
Funded debt at par value	305,250.00
From which should be deducted the portions, not definitely ascertainable, that may be represented by property sold for proceeds of	603,087.24

All of the equipment acquired by the Harlem River and Port Chester has been delivered to the lessee, the carrier, which has added the agreed value thereof to its accounts for investment in road and equipment and recorded its liability to the Harlem River and Port Chester in that sum. The amount recorded by the carrier for the Harlem River and Port Chester equipment is $3,349,186.50, or $58.05 less than the Harlem River and Port Chester recorded cost. The difference is the amount added to the Harlem River and Port Chester account of floating equipment in the fiscal year 1907. The carrier in its return of equipment has included equipment in service on date of valuation, both owned and leased, as its owned equipment. The total recorded cost of equipment found in the Harlem River and Port Chester accounts has, accordingly, been excluded from this statement.

It is not known whether the retirements credited to the investment in road and equipment account cover all property retired or abandoned.

The carrier has stated that the foregoing outlays include $168,540.47 as the cost of lands classified herein as noncarrier and $1,805,118.60 for lands classified as partly carrier and partly noncarrier. The section of this chapter devoted to cost of lands shows these amounts as supported by the accounting records. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

Original Cost to Date.

The original cost of the property owned by the Harlem River and Port Chester and used for the purposes of a common carrier at date of valuation can not be fully determined. The available data on the outlay for creating and improving the property are those summarized for road alone in the foregoing adjusted outlay for investment in road and equipment account. A distribution of this amount by primary accounts, according to the Harlem River and Port Chester's records is shown below:

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Road:	
Engineering	$426,929.76
Land for transportation purposes	5,862,261.98
Grading	3,146,901.73
Bridges, trestles and culverts	3,328,777.46
Ties	823,393.49
Rails	354,126.90
Other track material	192,065.34
Ballast	278,404.32
Tracklaying and surfacing	591,031.19
Right-of-way fences	7,085.39
Crossings and signs	2,616,141.25
Station and office buildings	2,189,299.50
Water stations	14,709.12
Fuel stations	3,359.82
Shops and engine houses	766,419.53
Storage warehouses	131,204.72
Wharves and docks	1,861,655.63
Telegraph and telephone lines	20,082.49
Signals and interlockers	570,097.47
Power-plant buildings	13,601.67
Power-transmission systems	1,556,990.10
Power-distribution systems	22,185.50
Power-line poles and fixtures	3,921.77
Miscellaneous structures	5,639.25
Roadway small tools	5,106.36
Other expenditures, road	15.00
Shop machinery	168,455.48
Total	24,959,882.22

General expenditures:	
Organization expenses	29,755.24
Law	52,181.88
Stationery and printing	2,601.39
Taxes	11,668.51
Interest during construction	357,775.76
Other expenditures, general	217,551.45
Total	671,534.23
Grand total	25,631,396.45

The total recorded net expenditure for equipment has been excluded because the equipment has been delivered to the lessee and the agreed value thereof added to its accounts for investment in road and equipment. The amount excluded is made up of the following:

Total expenditures for equipment:		
Cash	$2,650,359.77	
Notes payable	729,117.84	
		$3,379,477.61
Less equipment sold for cash		30,233.06
Net for equipment		3,349,244.55

186 This appears in the lessee's books as $3,349,186.50, or $58.05 less, as hereinbefore explained.

The carrier has stated that the foregoing outlays include $168,540.47 as the cost of lands classified herein as noncarrier and $1,805,118.60 for lands classified as partly carrier and partly noncarrier. The section of this chapter devoted to cost of lands shows these amounts as supported by the accounting records. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

In addition to the foregoing data obtainable from records supporting the content of its investment in road and equipment account, the Harlem River and Port Chester has filed with this commission a statement, in amount $275,784.55, claimed by it as expenditures charged to other accounts representing assessments for public improvements which it claims should be considered in arriving at the original cost of its property.

Cost of lands.—The Harlem River and Port Chester returned $6,420,421.40 as the cost of lands. We have excluded $2,074.75, payment for right to remove gravel, which has expired, $1,500, annual rental payable to the city of New York for right in land under water within lines of Pier

No. 39, and $1,800, estimated cost of grading street returned as costs.

The return further includes $20,832.32 of costs that can not be allocated to parcels and that may be duplicated in the return. With respect to this item, the Harlem River and Port Chester returns $20,832.32, which it could not assign to parcels, and, on the other hand, it returned a number of parcels for which it could not ascertain the recorded cost, but for which it reported considerations named in deeds. It is not improbable that the $20,832.32 is included, in part, in these considerations. Again, the carrier disposed of certain lands, and these costs that can not be allocated may have applied, in part, to lands, that the company no longer owns. It will be seen, therefore, that a definite statement that the $20,832.32 is or is not duplicated in the return can not be made.

Excluding the above items, a balance of $6,394,214.33 results, classified as follows:

Classification.	Costs supported by accounting records.	Amounts not supported by accounting records.
Carrier lands, owned and leased to the carrier	$4,337,567.01	$2,985.00
Noncarrier lands, owned	168,540.47	.....
Lands classified as partly carrier and partly noncarrier; owned	1,805,118.60	.....
Rights in public domain; owned and leased to the carrier	80,003.25	.....

The return also includes certain lands without costs, which represent streets and other highways used in common with the public. Of these we have classified five parcels as lands owned, and have excluded the remaining 13.

The carrier has filed a claim for the Harlem River and Port Chester amounting to $39,298.14 in connection with the cost of grade-grossing elimination which includes a part of the cost of lands returned by the company. If the original cost of the lands is used in lieu of the ascertained present value of lands, and the company's claim is in-
187 cluded in the cost of reproduction new, there will be a duplication of some undeterminate part of the amount of that claim. For that reason this item is hereinafter classified and explained separately from the items of land concerning which no further explanation appears to be necessary.

Cost of machinery.—The Harlem River and Port Chester returned machinery owned on date of valuation with $397,-

290 costs. In verifying these returns $1,785 has been excluded, representing an overstatement of the cost of four Taylor underfed stokers at Van Nest, N. Y., resulting in a balance of $395,505, classified as follows:

	Costs supported by accounting records.	Amounts not supported by accounting records.
Shop machinery	$149,643	$132,682
Power-plant machinery	26,706	62,150
Power-station apparatus	9,083	15,241
Total	185,432	210,073

Cost of equipment.—The Harlem River and Port Chester returns no equipment. See chapter on investment in road and equipment for information on the status of equipment.

Miscellaneous Physical Property.

The accounts of the Harlem River and Port Chester do not record, as such, any investment in miscellaneous physical property on date of valuation. However, certain lands owned by the company, with costs of $168,540.47, supported by the accounting records and charged to its investment in road and equipment account, have been classified herein as noncarrier lands. Certain other lands owned by it with costs of $1,805,118.60, supported by the accounting records and charged to its investment in road and equipment account, have been classified herein as partly carrier and partly noncarrier. The amount that would be includible in the miscellaneous physical property account to represent the investment in noncarrier lands has not been fully determined.

Leased Railway Property.

The property of the Harlem River and Port Chester is leased to the carrier under date of September 29, 1873, effective October 1, 1873, for a term of 99 years with the privilege of renewal. The lessee pays 7 per cent per annum on the capital stock, interest on all indebtedness, principal thereof, when due, cost of maintenance, and all taxes and assessments. In practice, there is no payment of money to the lessor. The amount credited as rent is dis-

bursed or charged by the lessee as interest on the debt and dividends on the stock. Some part of the road lying south of One hundred and seventy-fourth Street is common as to location with that of the New York, Westchester and Boston Railroad Company, and a part of the property is used jointly.

The New York Connecting Railroad Company, under an agreement of June 27, 1913, has some right to the use of the Harlem River and Port Chester's property below One hundred and thirty-second Street.

188 Holyoke and Westfield.

Development of Fixed Physical Property.

On date of valuation the railroad of the Holyoke and Westfield comprised 10.028 miles, extending from Holyoke to Westfield, Mass., built in 1870 and 1871, with industrial tracks in the city of Holyoke of 10.551 miles, built in 1878. The original road was put in use for freight traffic October 16, 1871, and for passenger traffic November 25, 1871. All of the work was done under contract by the New Haven and Northampton Railroad Company (of 1862).

History of Corporate Financing.

Capitalization.—The Holyoke and Westfield has issued and retired, and had outstanding on date of valuation, securities as follows:

Class.	Issued.	Retired.	Outstanding.
Capital stock	$260,000	.....	$260,000
Funded debt	660,000	$460,000	200,000
Total	920,000	460,000	460,000

The capital stock was authorized for $350,000.

The recorded considerations received for capital stock and funded debt were:

Par value issued.	Consideration.	Recorded value.
$660,000	Cash	$663,602
260,000	Construction	260,000
920,000	Total par value of securities.	
	Total recorded value	923,602
	Discount on $200,000 funded debt (charged to profit and loss)	3,000
6,602	Premium on $200,000 funded debt.	
926,602	Total	926,602

Of the premium, $2,461.98 was charged to expense, and the remainder to credit of premium on funded debt, reduced by annual charges to credit of profit and loss. The balance standing on date of valuation was $3,700.14. The $460,000 of funded debt was retired by cash. The Holyoke and Westfield reacquired $4,000 par value of the funded debt for $4,200. The funded debt outstanding on date of valuation consists of a single issue of first-mortgage 40 year 4¼ per cent bonds, dated April 1, 1911, par value $200,000.

Short-term notes.—A total of $46,831.57 of short-term notes were issued, of which $24,890.40 represented renewals. The remainder, $21,941.77, was issued for $21,808.83 cash and $132.34 interest; and all were retired with cash.

Results of Corporate Operations.

Income account.—The income account of the Holyoke and Westfield for the year ended on date of valuation and for the period from October 16, 1871, to date of valuation, is stated as follows:

189	Year.	Period.
Nonoperating income:		
Income from lease of road	$46,000.00	$1,467,240.87
Income from unfunded securities and accounts	112.17	5,824.71
Income from sinking and other reserve funds	.....	5,438.41
Total (gross income)	46,112.17	1,478,503.99
Deductions from gross income:		
Interest on funded debt	8,330.00	536,720.00
Interest on unfunded debt	.....	3,447.00
Maintenance of investment organization	973.65	85,288.79
Income applied to sinking and other reserve funds	.....	5,438.41
Miscellaneous income charges	.....	42,000.00
Total	9,303.65	672,894.20
Net income	36,808.52	805,609.79
Disposition of net income:		
Dividend appropriations of income	36,400.00	742,300.00
Income balance transferred to credit of profit and loss	408.52	63,309.79

Profit and loss account.—The profit and loss account for the period from October 16, 1871, to date of valuation, as shown by records of the Holyoke and Westfield, is as follows:

Credits:		
Credit balances transferred from income		$63,309.79
Miscellaneous credits—		
Release of premiums on funded debt	$439.88	
Adjustment of sundry balance sheet accounts	1,778.99	
Balance transferred from sinking fund	53,438.41	
		55,657.28
Total		118,967.07
Debits:		
Surplus applied to sinking and other reserve funds		48,000.00
Debt discount extinguished through surplus		3,000.00
Delayed income debits—		
Proportion of expenses to Oct. 1, 1874	996.22	
Adjustment of interest on funded debt to accrual basis	2,082.50	
		3,078.72
Miscellaneous debits—		
Arbitrary credit to investment in road and equipment	62,268.89	
Loss on funded debt reacquired	140.02	
		62,408.91
Credit balance on date of valuation		2,479.44
Total		118,967.07

Investment in Road and Equipment.

The investment in road (the Holyoke and Westfield owns no equipment), including land, on date of valuation, is stated on the books of the Holyoke to be $460,000, made up as follows:

Cash	$261,307.03	
Funded debt	260,000.00	
Total		$521,307.03

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Other items:		
Debits—		
Proportion of expense of operation to Oct. 1, 1874	$1,886.66	
Credits:		
Cash received from town of Holyoke	924.80	
Profit and loss adjustment in retirement of bonds Apr. 1, 1898	60,000.00	
Profit and loss adjustment to reduce investment to capital liabilities	2,268.89	
Total credit	63,193.69	
Net credit		$61,307.03
Recorded balance		460,000.00

Seven items, aggregating $3,420.43, charged in the accounts for land, do not appear in the return, by the Holyoke and Westfield, of lands held on date of valuation. No

adjustment in investment was made with respect to lands sold for $2,067.50.

If the "other items" were eliminated, and if the items representing land, explained in the preceding paragraphs, were deducted, the balance of the investment in road and equipment account would become $515,819.10. This balance, as adjusted, would, so far as it is resolvable into its constituent elements, comprise the following classes of outlay:

Recorded money outlay	$261,307.03
Funded debt at par value	260,000.00
From which should be deducted the unascertainable outlay for—	
Lands sold for proceeds of	2,067.50
Lands charged in the account but not owned on date of valuation	3,420.43

It is not known whether the retirements indicated cover all property retired or abandoned.

Original Cost to Date.

The original cost to date of all common-carrier property owned by the Holyoke and Westfield can not be ascertained from the records that are obtainable. The recorded outlay for road, including land, to date of valuation is as follows:

By the Holyoke and Westfield:		
Recorded money outlay		$86,307.03
Less the original cost of land sold for proceeds of		3,420.43
By the New Haven and Northampton Railroad Company (of 1862):		
Recorded money outlay		634,835.50
By the carrier:		
Recorded money outlay	$22,066.43	
Less amount re-collected	6,380.96	
		15,685.47
Less the original cost of land sold for proceeds of		2,067.50

It is not known whether the retirements indicated cover all property retired or abandoned.

191 The New Haven and Northampton Railroad Company (of 1862), the first lessee, which built the road for the Holyoke and Westfield, received therefor $175,000 in cash, a part of the sum for which the capital stock was sold, and the Holyoke and Westfield's bonds of the par value of $260,000, or a total book credit of $435,000. The records of the New Haven and Northampton Railroad Company (of 1862) show that the work cost $630,490.43, which includes $8,295 as the discount on the Holyoke and Westfield's 7 per cent bonds, and $12,640.07, a part of the

cost of the industrial tracks in Holyoke, which is not definitely described. The bonds were issued to the New Haven and Northampton Railroad Company (of 1862) to the par value of $200,000.

The carrier, as the succeeding lessee, has recorded in its books a gross expenditure of $22,066.43 for additions and betterments to the Holyoke and Westfield property and against that amount has credited $8,448.46, leaving a net charge of $13,617.97. The credit amount includes $2,067.50 received in cash for land of the Holyoke and Westfield sold, and cash collected from the town of Holyoke and other credit items, $6,380.96. The amount paid by the town of Holyoke was a part of the cost of a bridge at a street crossing. The amount received for land sold $2,067.50 is included in $5,487.93 shown as the difference between the cost of land as recorded in the accounting records and the cost as returned by the Holyoke and Westfield.

In addition to the foregoing data obtainable from records supporting the content of its investment in road and equipment account, the carrier has filed with this commission a statement, in amou-t $147, claimed by it as expenditures charged to other accounts representing assessments for public improvements which it claims should be considered in arriving at the original cost of its property.

Leased Railway Property.

The original lease was dated December 3, 1870, and was in perpetuity to the New Haven and Northampton Railroad Company (of 1862). It provided for rent equivalent to 7 per cent on $200,000 of outstanding debt, half the gross earnings in excess of $28,000, and, in addition, taxes and maintenance. On May 4, 1878, an additional rent was provided equivalent to 6 per cent on $60,000, of new bonds with provision with respect to gross earnings charged to road in excess of $35,200. On April 1, 1887, the lease was assigned to the carrier. On January 30, 1908, effective as of June 1, 1907, the lease was further amended to require a payment semiannually as rent of $46,000 per year, in addition to all taxes and the cost of maintenance. In the original lease there is a clause which is confirmed by the supplemental leases, requiring the lessee to fix the rates for freight and passenger traffic from New York and from

New Haven within a stated differential as related to the rates from the two points named, to Springfield, Mass.

Providence and Worcester.

Corporate History.

The Providence and Worcester was formed November 25, 1845, as a consolidation of the Providence and Worcester Railroad Company (Mass.), incorporated in Massachusetts by special act March 12, 1844, and the Providence and Worcester Railroad Company (R. I.), incorporated in Rhode Island by special act May 10, 1844.

192 Development of Fixed Physical Property.

The property of the Providence and Worcester was constructed by its own forces, and construction completed, as follows:

	Recorded road mileage.
Providence, R. I., to Millville, Mass., 1847	19.00
Millville to Worcester, Mass., 1847	23.00
Valley Falls branch, R. I., 1874	7.00
Total	49.00

The Providence and Worcester deeded to the Boston and Providence (R. I.) a half interest in the 4.970 miles of road from Massachusetts State line to Boston Switch, R. I. The remainder of the mileage, which constitutes the road mileage wholly owned, is now surveyed to be 43.083 miles.

The Providence and Worcester has joint interest in 0.756 mile of road with the Norwich and Worcester; and in 0.283 mile of road at Worcester, Mass., with the Norwich and Worcester and the Boston and Maine Railroad.

History of Corporate Financing.

The Providence and Worcester has issued and retired, and had outstanding on date of valuation, securities as shown in schedule following:

	Issued.	Retired.	Outstanding.
Capital stock	$3,500,000	.....	$3,500,000
Funded debt	4,404,000	$2,904,000	1,500,000
Total	7,904,000	2,904,000	5,000,000

The recorded considerations received for the securities issued were:

Par value issued.	Considerations.	Recorded value.
$3,442,500.00	Cash	$3,630,818.11
	Cash	1,817,692.64
	Patented improvement for equipment	600.00
	Land	2,177.00
2,152,000.00	Notes receivable	66,219.70
	Retirement of notes payable	172,433.72
	Interest on notes payable	1,625.31
	Advertising and commission	884.50
1,500.00	Notes receivable	1,500.00
66,000.00	Interest during construction	66,000.00
1,985,000.00	Retirement of other securities	1,985,000.00
7,000.00	Settlement of claims	7,000.00
250,000.00	Issued to lessee for additions and betterments to property	276,250.00
7,904,000.00	Total par value securities.	
	Total recorded value	8,028,200.98
	Premium on stock:	
29,552.00	Credited to profit and loss.	
634.42	Credited to income as interest.	
90,780.95	Credited to road and equipment.	
	Discount on stock:	
	Charged to profit and loss	116,600.00
	Charged to income as interest	1,330.14
	Premium on bonds:	
121,163.75	Credited to profit and loss.	
8,146,131.12		8,146,131.12

193 The authorization for capital stock was for $3,500,000, all of which was issued and outstanding on date of valuation. The funded debt outstanding on date of valuation consisted of a single issue of first-mortgage 50-year 4 per cent bonds, dated October 1, 1897.

Short-term notes.—From date of incorporation to date of valuation the Providence and Worcester issued and retired short-term notes for considerations as follows:

Issued.	Considerations.	Retired.
$3,555,740.63	Cash	$4,137,497.17
321,050.31	Property, road.	
173,633.21	Property, equipment.	
42,035.03	Open accounts.	
3,796.80	Interest.	
15,000.00	Capital stock of the Providence and Worcester.	
198,674.91	Material and supplies.	
	First-mortgage 20-year 6 per cent bonds, due Oct. 1, 1897	172,433.72
3,748,300.00	Renewals	3,748,300.00
8,058,230.89		8,058,230.89

Results of Corporate Operations.

Income account.—The income account of the Providence and Worcester for the year ended on date of valuation, and for the period from September 27, 1847, to date of valuation, is stated as follows:

	Year.	Period.
Operating income:		
Railway operating revenues	.....	$27,158,303.20
Railway operating expenses	.....	17,575,573.38
Net revenue from railway operations	.....	9,582,729.82
Railway tax accruals	.....	992,538.50
Railway operating revenue	.....	8,590,191.32
Nonoperating income:		
Income from lease of road	$416,000.00	11,473,583.34
Miscellaneous rent income	.....	181,447.90
Income from unfunded securities and accounts	2,161.55	202,263.28
Nonoperating income	418,161.55	11,857,294.52
Gross income	418,161.55	20,447,485.84
Deductions from gross income:		
Hire of equipment	.....	88,928.28
Joint-facility rents	.....	91,024.97
Rent for leased road	.....	133,550.00
Miscellaneous rents	.....	27,353.31
Interest on funded and unfunded debt	60,000.00	3,668,713.40
Maintenance of investment organization	7,467.28	167,594.29
Total	67,467.28	4,177,164.25
Net income	350,694.27	16,270,321.59
Disposition of net income:		
Dividend appropriations of income	350,000.00	13,830,664.00
Balance transferred to credit of profit and loss	694.27	2,439,657.59

Taxes from 1847 to 1855, inclusive, in amount not known, were included in operating expenses. The Providence and Worcester operated under lease the Milford and Woonsocket Railroad Company from August 1, 1868, to April 30, 1883, and the Hopkinton Railroad Company from May 1, 1873, to April 30, 1883.

194 *Profit and loss account.*—The profit and loss account for the period from September 27, 1847, to date of valuation, as shown by records of the carrier, is as follows:

Credits:		
Credit balances transferred from income		$2,479,932.12
Delayed income credits		100,920.91
Miscellaneous credits—		
Premium on sale of capital stock	$29,552.00	
Premium on sale of bonds	121,163.75	
Profit and loss deficit for year 1854 transferred to road and equipment	37,891.59	
East Providence Land Company's cash on hand turned over	6,794.05	
Difference between inventory value at May 1, 1888, and book value at July 1, 1889, of material and supplies turned over to lessee	22,957.40	
Excess of appraised value of equipment on hand May 1, 1888, over book value	253,887.40	
Proceeds from sale of land to city of Pawtucket	1,500.00	
Profit on capital stock reacquired and sold	726.00	
		474,472.19
Total		3,055,325.22
Debits:		
Debit balances transferred from income		40,274.53
Dividend appropriations of surplus		1,167,500.00
Delayed income debits		251,656.08
Miscellaneous debits—		
Discount on capital stock	116,600.00	
Surplus transferred to road and equipment	613,983.29	
Commission on sale of bonds	812.50	
Compensation to trustees for bonds	2,000.00	
Engraving and printing bonds	1,600.00	
Uncollectible accounts written off	16,453.79	
Proportion of expense account of lease to New York, Providence and Boston Railroad Company	11,770.67	
Gratuity to treasurer	500.00	
Settlement of award with estate of H. Campbell	300.00	
Book value of road and equipment reduced (road, $8,627.81; equipment, $584,239.61)	592,867.42	
		356,887.67
Credit balance at June 30, 1915		239,006.94
Total		3,055,325.22

Investment in Road and Equipment.

The investment in road and equipment, including land, on date of valuation, is stated in the books of the Providence and Worcester to be $5,105,137.40, made up as follows.

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Road:	
Cash	$4,336,275.70
Capital stock	68,177.00
Notes payable issued	321,050.31
Notes receivable surrendered	10,414.63
Cash reimbursement to lessee	430,000.00
Bonds $250,000 par value reimbursement to lessee, issued at agreed value	276,250.00
Total	5,442,167.64

From which is deducted—		
Proceeds of sale of land and buildings	159,715.68	
Proceeds of sale of branch joint with the Nashua (about 1 mile)	8,250.00	
Received from the Boston and Providence Railroad Corporation, being one-half of cost of road from Providence to Central Falls, R. I., and total cost of road from Central Falls to Massachusetts State line	370,403.47	
Total	538,369.15	
		$4,903,798.49
Equipment:		
Cash	1,164,761.64	
Capital stock	600.00	
Notes payable	173,633.21	
Total	1,338,994.85	
From which is deducted proceeds of sale of equipment	62,100.00	
		1,276,894.85
Net charges for road and equipment		6,180,693.34
Other items:		
Debits—		
Interest on notes	2,613.86	
Interest on unpaid installment on forfeited stock	749.50	
Expense on forfeited stock	339.46	
Rent paid for depot at Worcester	540.00	
Deficit in earnings, 1854	37,891.59	
Improvement to leased wharf at Providence	4,661.00	
Book value of equipment increased to appraised value at date of lease, credited to profit and loss	253,887.40	
Total	300,682.81	
Credits—		
Surplus earnings, 1850–1866, road	560,221.05	
Surplus earnings, 1853–1866, equipment	53,762.24	
Book value of road reduced—		
Charged to operating expenses	36,743.62	
Charged to profit and loss	8,627.81	
196		
Book value of equipment reduced in lieu of depreciation—		
Charged to operating expenses	35,000.00	
Charged to profit and loss	584,239.61	
Premiums on capital stock—		
Credited to road	61,887.95	
Credited to equipment	28,893.00	
Interest on preliminary stock installment	1.31	
Rents collected on land	73.27	
Insurance recovered from station fire	696.41	
Receipt from grain elevator at Providence	6,092.48	
Total	1,376,238.75	
		1,075,555.94
Balance of investment date of valuation—		
Road	4,276,250.00	
Equipment	828,887.40	
		5,105,137.40

The "other items" noted above are not in accordance with the present accounting classification. If such were eliminated from the Providence and Worcester investment in road and equipment account, and the equipment be omitted, because it has been disposed of to the lessee, as hereinafter explained, the balance therein would be reduced to $4,903,798.49, representing investment in road only, summarized as follows:

Recorded money outlay	$4,766,275.70
Short-term notes at par value	321,050.31
Capital stock par value	68,177.00
Funded debt, par value $250,000, issued at an agreed value of	276,250.00
Notes receivable surrendered, par value	10,414.63
From which should be deducted the portions, not definitely ascertainable, that may be represented by—	
Property sold for proceeds of	167,965.68
Property transferred to the Boston and Providence Railroad Corporation for	370,403.47

The amount of $370,403.47 credited as received from the Boston and Providence Railroad Corporation for the Providence and Worcester's portion of the cost of property transferred is as it appears on the Providence and Worcester's records. The books of the Boston and Providence Railroad Corporation show this as $389,881.67. No explanation of the difference can be made. All of the equipment owned by the Providence and Worcester on May 1, 1888, when its property was leased, was delivered to the lessee and none has been acquired since. The carrier, the present lessee, has added to its account for investment in road and equipment the appraised value of the equipment delivered under the lease, $828,887.40, and has recorded its liability to the Providence and Worcester in that sum. The carrier, in its return of equipment, has included equipment both owned and acquired under lease, in use on date of valuation, as its owned equipment. The total book cost of equipment found in the books of the Providence and Worcester has accordingly been excluded from the account as restated. It is not known whether the retirements
197 credited to the investment in road and equipment account cover all property retired or abandoned.

Property worn out and withdrawn from use has not in all cases been written out of the investment account. In some instances property abandoned or retired has been replaced by other property, but no adjustments of the investment in road and equipment were made to provide

for the differences in cost. The account contains no credits for property retired except for that which was sold. The proceeds of such sales were credited, but in what amount these credits were different from the original charges for the property sold can not be stated. The record is not sufficient to show just what changes should be made.

The carrier has stated that the foregoing outlays include $53,929.28 as the cost of certain lands classified herein as noncarrier and $85,252.52 for lands classified as partly carrier and partly noncarrier. Of these amounts, $53,594.69 (comprising $50,616.61 and $2,978.08) and $85,202.52 (comprising $74,291.84 and $10,910.69) are shown in the chapter on original cost to date as supported by accounting records, and $334.59 and $50 as not so supported. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

The amount shown as expenditures by the lessee, $706,250, was repaid by the Providence and Worcester by the issue of bonds and the proceeds from the sale of stock. Capital stock of the par value of $500,000 was issued to stockholders for cash at par; $70,000 of the proceeds was retained by the Providence and Worcester to pay for work done prior to the lease; and the remainder of the proceeds, $430,000 was paid to the lessee. First-mortgage bonds of the par value of $250,000 were delivered to the lessee in settlement of the remaining $276,250 expended by the lessee.

Original Cost to Date.

The original cost to date of all common-carrier property owned by the Providence and Worcester can not be ascertained from the records that are obtainable. The recorded outlay for road, including land, to date of valuation, is as follows:

Recorded money outlay by the Providence and Worcester	$4,766,275.70
Recorded money outlay by the carrier:	
Repaid with $250,000 par value of bonds	276,250.00
Charged to improvements on leased railway property	1,818,147.89
Short-term notes at par value	321,050.31
Capital stock at par value	68,177.00
Notes receivable surrendered at par value	10,414.63
From which should be deducted the portions, not definitely ascertainable, that may be represented by—	
Property sold for proceeds of	167,965.68
Property transferred to the Boston and Providence Railroad Corporation for	370,403.47

It is not known whether the retirements credited to the investment in the road and equipment account cover all property retired or abandoned. The outlays listed above may include some or all of the cost of noncarrier lands and of certain lands classified partly as carrier and partly as non-carrier. The Providence and Worcester had no account for miscellaneous physical property. These costs, so far as ascertained, are shown hereinafter.

198 In addition to the foregoing data obtainable from records supporting the content of its investment in road and equipment account, the Providence and Worcester has filed with this commission a statement in amount $10,297.83 claimed by it as expenditures charged to other accounts representing assessments for public improvements, which it claims should be considered in arriving at the original cost of its property.

Cost of lands.—The Providence and Worcester reports the original cost of all lands and rights owned, including both carrier and noncarrier lands, as $1,512,216.70. The return includes $71,811.63 of costs that can not be allocated to parcels and which may be duplicated in the return. With respect to this item, the carrier returns $71,811.63 which it could not assign to parcels, and, on the other hand, it returned a number of parcels for which it could not ascertain the recorded cost, but for which it reported the consideration named in deeds and in condemnation awards. Therefore, it is not improbable that this $71,811.63 is included, at least in part, in these considerations. Furthermore, the Providence and Worcester disposed of certain lands, and these costs, that can not be allocated may have applied in part to lands that it no longer owns. Consequently, it is apparent that a definite statement that the $71,811.63 is or is not duplicated in the return can not be made.

The return further includes costs of $188,945.23 which represent claimed expenditures for land, land damages, and other expenses for grade-crossing eliminations.

The carrier has filed a claim for the Providence and Worcester with our Bureau of Valuation, amounting to $32,482.27, in connection with the cost of grade-crossing elimination, which includes a part of the cost of lands returned by the company. If the original cost of the lands is used in lieu of the ascertained present value of lands, and the

carrier's claim is included in the cost of reproduction new, there would be a duplication of some indeterminate part of the amount of that claim. For that reason this item is hereinafter classified and explained separately from the items for land, concerning which no further explanations appear to be necessary.

In verification and after excluding the above items, the balance would show $1,251,459.84 of costs, classified as follows:

Classification.	Costs supported by accounting records.	Amounts not supported by accounting records.
As a whole.		
Carrier lands owned	$917,531.91	$19,208.19
Carrier lands jointly owned, the Providence and Worcester's portion	173,314.32	172.36
Rights in private lands	736.66	1,314.60
Noncarrier lands owned	50,616.61	.....
Noncarrier lands jointly owned, the Providence and Worcester's portion	2,978.08	334.59
Lands classified as partly carrier and partly noncarrier, owned	74,291.84	.....
Lands classified as partly carrier and partly noncarrier, owned jointly with other carriers	10,910.68	50.00
In Rhode Island.		
Carrier lands owned	721,182.12	16,230.18
Carrier lands jointly owned, the Providence and Worcester's portion	138,680.63	172.36
Rights in private lands	340.00	100.00
Noncarrier lands owned	36,948.44	.....
Noncarrier lands jointly owned, the Providence and Worcester's portion	2,978.08	334.59
Lands classified as partly carrier and partly noncarrier, owned	71,083.99	.....
Lands classified as partly carrier and partly noncarrier, owned jointly with other carriers	10,910.68	50.00
In Massachusetts.		
Carrier lands owned	196,349.79	2,978.01
Carrier lands jointly owned, the Providence and Worcester's portion	34,633.69	.....
Rights in private lands	396.66	1,214.60
Noncarrier lands owned	13,668.17	.....
Lands classified as partly carrier and partly noncarrier, owned	3,207.85	.....

199 The carrier has stated that the foregoing outlays include $53,929.28 as the cost of certain lands classified herein as noncarrier lands and $85,252.52 for lands classified as partly carrier and partly noncarrier. Of these amounts, $53,594.69 (comprising $50,616.61 and $2,978.98) and $85,202.52 (comprising $74,291.84 and $10,910.68) are shown in the chapter on original cost to date as supported

by the accounting records, and $334.59 and $50 as not so supported. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

The recorded cost of land and land damages incident to the elimination of grade crossings, hereinbefore referred to, was assumed by the respective participants as follows:

Providence and Worcester	$109,063.79
Others	79,881.44
Total	188,945.23

The proportion expended by the Providence and Worcester has been verified in the accounting records and consists of recorded money outlay classified as for carrier lands owned and used. A statement has been submitted by the Providence and Worcester for consequential damages in connection with the elimination of grade crossings, which it claims should be considered in the reproduction costs of its property. This claim has been classified as follows:

Items included in the land return	$143,354.45
Items not included in the land return	945.12
Total	144,299.57
Less amount allocated to other parties	111,817.30
Balance claimed by the Providence and Worcester	32,482.27

Inasmuch as the total expenditure includes such a large proportion of items appearing in the land return, the amount claimed as consequential damages must of necessity include an equal proportion of such items which, if allowed as part of the reproduction costs of the crossings would, to that extent, be a duplication of items, the amount of which cannot be definitely stated, included as part of the original cost of lands if the original cost of lands is used in lieu of present value.

Cost of equipment.—The Providence and Worcester made no return as to equipment. The total recorded net expenditure for equipment has been excluded, because the equipment has been transferred to the lessee and the appraised value thereof added to its account for investment in road and equipment. The amount transferred is the net of all the entries in the account for investment in road and equipment described as relating to equipment, and comprises the following:

Cash	$1,164,761.64
Capital stock	600.00
Notes payable	173,633.21
Total expenditures	1,338,994.85
Less proceeds from sale of equipment	62,100.00
Net expenditures	1,276,894.85

200 This amount was reduced by charges to the following accounts:

Earnings (profit and loss)	$53,762.24	
Operating expenses	35,000.00	
Premium on capital stock	28,893.00	
Profit and loss, debit	584,239.61	
Total, debit	701,894.85	
Profit and loss, credit	253,887.40	
		$448,007.45
Net charge for equipment transferred to lessee		828,887.40

Cost of shop machinery.—The Providence and Worcester returned $80,580 as costs of shop machinery. This represents shop machinery located in the shops at Valley Falls, R. I. This has been compared with the accounting records and shows $12,844 as actual costs supported by accounting records and $67,736 as estimates by the Providence and Worcester.

Miscellaneous Physical Property.

The accounts of the Providence and Worcester do not record, as such, any investment in miscellaneous physical property on date of valuation. However, certain lands, with costs of $53,594.69 charged to the account for investment in road and equipment and $334.59 not identified in the accounts, have been classified herein as noncarrier lands. On the other hand, other lands owned by the company and charged to its account for investment in road and equipment have been classified herein as partly carrier and partly noncarrier, as detailed hereunder.

Classification.	Costs supported by accounting records.	Amounts not supported by accounting records.
Lands classified as partly carrier and partly noncarrier, owned, leased to carrier	$74,291.84	.....
Lands classified as partly carrier and partly noncarrier, jointly owned, leased to the carrier, portion of the Providence and Worcester	10,910.68	$50.00

The amount that would be includible in the miscellaneous physical property account to represent the investment in noncarrier lands has not been fully determined.

Investments in Other Companies.

The Providence and Worcester has no investments in other companies. Prior to date of valuation it had acquired and disposed of notes receivable for the following considerations.

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Recorded value in acquisition.	Consideration.	Recorded value in disposal.
$53,670.90	Cash	$288,080.20
139,230.00	Stock installments.	
1,500.00	Part payment for two bonds.	
16,989.70	Other notes receivable.	
123,540.12	Other considerations	32,963.92
	Property, road	10,414.63
	Part payment for Providence and Worcester stock	500.00
	Uncollectible notes canceled	2,971.97
126,615.00	Renewals	126,615.00
461,545.72	Total	461,545.72

Leased Railway Property.

On May 1, 1888, the Providence and Worcester leased its property to the New York, Providence and Boston Railroad Company for 99 years. On April 1, 1892, the New York, Providence and Boston Railroad Company leased its property to the carrier, which also took over the Providence and Worcester's road under the lease of May 1, 1888. A new lease was made on December 17, 1892, to be effective from July 1, 1892, and to run for 99 years. The lessee pays as rent each year 10 per cent on the lessor's capital stock, interest on the debt and $6,000 a year for maintenance of the Providence and Worcester's organization. The rent is payable quarterly. The lessee maintains the property and pays all taxes. Additions and betterments to the leased property made by the lessee become the property of the lessor without liability for payment therefor. The lessee is liable to the Providence and Worcester at the termination of the lease for equipment and personal property taken by the former lessee to the amount of $909,635.37, of which $828,887.40 represents equipment. For the year ended on

date of valuation the payments to the lessor under provisions of the lease amounted to $416,000.

Chatham Railroad.

Development of Fixed Physical Property.

The road of the Chatham Railroad, 7.100 miles in length, was opened for operation November 21, 1887.

History of Corporate Financing.

The capital stock authorized is 700 shares of $100 each, or $70,000, of which 682 shares have been issued at par for cash. The town of Chatham *Railroad* holds 310 shares and the remainder is held in small lots by 316 shareholders. First-mortgage 6 per cent bonds, par value $30,000, dated November, 1887, due in 15 and 20 years, were issued at par for cash and were retired with cash at, or before, maturity. Notes payable issued for, and retired by, cash at par amounted to $20,500. On date of valuation all evidences of debt had been retired and only the capital stock, $68,200, was outstanding.

202 Results of Corporate Operations.

Income account.—The income account of the Chatham Railroad for the year ended on date of valuation and for the period from November 21, 1915, to date of valuation, is stated as follows:

	Year.	Period.
Operating income:		
Railway tax accruals	.....	$4,542.89
Net deficit	.....	4,542.89
Nonoperating income:		
Income from lease of road	$3,610.00	97,502.31
Other income	.....	3,557.08
Total	3,610.00	101,059.39
Gross income	3,610.00	96,516.50
Deductions from gross income:		
Miscellaneous rents	.....	25.00
Interest on funded debt	.....	29,256.00
Interest on unfunded debt	.....	1,144.37
Maintenance of investment organization	156.00	4,828.38
Total	156.00	35,253.75
Net income	3,454.00	61,262.75
Disposition of net income:		
Dividend appropriations of income	3,410.00	26,939.00
Income balance transferred to credit of profit and loss	44.00	34,323.75

Profit and loss account.—The profit and loss account for the period from November 21, 1887, to date of valuation, as shown by records of the Chatham Railroad is as follows:

Credits:	
Credit balances transferred from income	$36,270.27
Miscellaneous credits	516.37
Grand total	36,786.64
Debits:	
Debit balances transferred from income	1,946.52
Loss on retired road and equipment (car house destroyed)	1,000.00
Credit balance on date of valuation	33,840.12
Grand total	36,786.64

Investment in Road and Equipment.

The investment in road (no equipment is owned), including land, on date of valuation, is stated in the books of the Chatham Railroad to be $99,491.12, consisting entirely of recorded money outlay, of which $96,543.21 was for original construction and $3,947.92 for additions and betterments, from which was deducted $1,000 representing the amount charged to profit and loss for car house destroyed. The actual outlay of the Chatham Railroad in the car house, which was destroyed, is not known, nor is it known whether this item covers all the property retired or abandoned, the Chatham Railroad having made no return of abandoned property.

The outlays by the Chatham Railroad may also include some of the cost of noncarrier lands and some of the cost of partly carrier and partly noncarrier land. In its
203 return of lands the Chatham Railroad reports costs supported by accounting records of $125 of noncarrier lands and of $373 for lands devoted partly to carrier and partly to noncarrier purposes.

The carrier has stated that the above outlays include $125 and $373, the cost of certain lands classified herein as noncarrier lands and as partly carrier and partly noncarrier lands, respectively. These amounts are shown in the chapter on original cost to date as supported by the accounting records. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

Original Cost to Date.

The original cost to date of all common-carrier property owned by the Chatham Railroad can not be ascertained

from the records that are obtainable. The recorded money outlay for road, including land, to date of valuation, is as follows:

By the Chatham Railroad	$100,491.13
By the carrier (charged to improvements on leased railway property)	205.17
Total	100,696.30

From the above should be deducted the original outlay for the car house destroyed, charged off at $1,000, and the original outlay attaching to lands devoted to noncarrier purposes, and further the original outlay representing additional property retired or abandoned if such there be.

The carrier has stated that the above outlays include $125 and $373, the cost of certain lands classified herein as noncarrier lands and as partly carrier and partly noncarrier lands, respectively. These amounts are shown in the section of this chapter devoted to the cost of lands, as supported by the accounting records. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

Cost of lands.—The Chatham Railroad reports the original cost of all lands owned, including carrier and noncarrier lands, as $5,908.31, which, after a check thereof, may be classified as follows:

Classification.	Cost supported by accounting records.
Carrier lands owned	$5,410.31
Noncarrier lands owned	125.00
Lands classified partly as carrier and partly as noncarrier, owned.	373.00

Miscellaneous Physical Property.

The accounts of the Chatham Railroad do not record, as such, any investment in miscellaneous physical property on date of valuation. However, certain lands, with costs of $125, owned by the company and charged to its account for investment in road and equipment, have been classified herein as noncarrier lands. On the other hand, other lands owned by the company and charged to its account for investment in road and equipment, have been classified herein as partly carrier and partly noncarrier. These lands are

returned with costs of $373, which are supported by
204 the accounting records. The amount that would be includible in the miscellaneous physical property account to represent the investment in noncarrier lands has not been fully determined.

Leased Railway Property.

The property of the Chatham Railroad is leased to the carrier under date of March 15, 1911, which lease runs from January 1, 1911, for 81 years and 2 months. The lessee pays as rent each year $5 per share on 682 shares of capital stock and $200 for maintenance of the lessor's organization. The rent is payable semiannually. The lessee pays all taxes and maintains the road. The rent for the year ended on date of valuation was $3,610. Prior to the effective date of the present lease the rent was a proportion of the gross revenues. From the date of operation, November 21, 1887, the road was operated by the Old Colony Railroad under contract, to March 1, 1893. At that date the Old Colony Railroad leased all of its property to the carrier, which operated the Chatham Railroad under the same contract until June 16, 1905, when a new agreement was made. On March 15, 1911, a lease for 81 years and 2 months from January 1, 1911, was executed, and under this lease the property is now held.

Norwich and Worcester.

Corporate History

The following chart shows the short titles of the corporations, the respective dates of incorporation, and for each predecessor the date of succession, the immediately succeeding corporation, and the manner of succession. Reference to each of these corporations is made in the last column by its respective number shown in the first column.

No.	Name.	Incorporation.	Succession.
1	Norwich and Worcester Railroad Company.	In Connecticut and Massachusetts, June 22, 1836.	
2	Boston, Norwich and New London Railroad Company.	In Connecticut, May 1, 1832.	Consolidated with 3 to form 1, June 22, 1836.
3	The Worcester and Norwich Railroad Company.	In Massachusetts, Mar. 15, 1833.	Consolidated with 2 to form 1, June 22, 1836.

Development of Fixed Physical Property.

On date of valuation the Norwich and Worcester owned 70.545 miles of railroad, extending from Worcester, Mass., to Groton, Conn., with a branch of about 0.22 mile in the city of Worcester. The road was built under contract, and the sections were put into operation as completed, as follows:

	Mileage
Worcester, Mass., to Norwich, Conn., 1840	59
Norwich, Conn., to Allyn's Point, Conn., 1843	6
Allyn's Point, Conn., to Groton, Conn., 1889	6
Total	71

History of Corporate Financing.

The Norwich and Worcester has issued and retired, and had outstanding on date of valuation, securities as follows:

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	Issued.	Retired.	Outstanding.
Common stock	$2,400,000.00	$2,393,400.00	$6,600.00
Preferred stock	3,000,000.00	.....	3,000,000.00
Funded debt	3,752,270.59	2,552,270.59	1,200,000.00
Total	9,152,270.59	4,945,670.59	4,206,600.00

The recorded considerations received for the securities issued were:

Par value issued.	Consideration.	Recorded value.
$1,052,445.87	Unknown	$1,052,445.87
4,583,200.00	Cash	4,507,653.26
44,500.00	Bills receivable	44,500.00
400,000.00	Massachusetts certificates of debt	420,000.00
200,000.00	City of Norwich certificates of debt	200,000.00
99,824.72	Retirements of dividend scrip	99,824.72
328,900.00	Stock of Norwich and New York Transportation Company	420,575.00
419,000.00	Treasury stock canceled	419,000.00
1,974,400.00	Common stock retired by preferred	1,974,400.00
50,000.00	Loan of credit to Norwich and New London Steamboat Company	50,000.00
9,152,270.59	Total par value of securities.	
	Total considerations	9,188,398.85
342,777.22	Premium on stock sold for cash.	
96,675.00	Premium on stock issued for securities.	
96,113.00	Premium on bonds sold for cash.	
20,000.00	Premium on certificates of debt.	
	Discount on stock sold for cash	514,436.96
	Commissions on bonds issued for other securities.	5,000.00
9,707,835.81		9,707,835.81

Of the common stock, $1,974,400 par value was retired by conversion into preferred stock, and $419,000 canceled. There is outstanding a balance of $6,600 par value, the holders of which are unknown, and on which no dividends are accrued. Funded debt was retired as follows: $1,210,750 by cash, $503,000 by notes payable, $788,470.59 by notes, $50,000 by loan canceled, and $50 by gain in retirement charged to profit and loss, making a total of $2,552,270.59.

The funded debt outstanding on date of valuation consisted of a single issue of 30-year 4 per cent bonds, dated March 1, 1987, which were authorized to the extent of $2,000,000, but of which only $1,200,000 was issued.

Short-term notes.—From date of incorporation to date of valuation the Norwich and Worcester issued and retired short-term notes for consideration as follows:

Issued.	Consideration.	Retired.
$3,029,956.77	Cash	$3,945,860.51
7,190,382.81	Renewals	7,190,382.81
83,143.24	Construction.	
108,734.45	Equipment.	
129,726.05	Operating materials.	
503,000.00	Other securities retired.	
125,000.00	Loan of credit, canceled	125,000.00
42,000.00	Guarantee of loan.	
49,300.00	Unknown.	
11,261,243.32		11,261,243.32

There is no outstanding liability at date of valuation.

206 *Scrip.*—Interest bearing scrip was issued as dividends on stock in 1855 and 1856 to the par value of $95,017.50, which, with interest amounting to $7,655.72, was redeemed by cash, $2,848.50, and bonds, $99,824.72.

Results of Corporate Operations.

Income account.—The income account of the Norwich and Worcester for the year ended on date of valuation, and for the period from March 1, 1843, to date of valuation, may be stated as follows:

	Year.	Period.
Operating income:		
Railway operating revenues		$23,406,977.82
Railway operating expenses		14,789,933.59
Net revenue from railway operations		8,617,044.23

	Year.	Period.
Nonoperating income:		
Income from lease of road	$290,500.00	50,082.42
Dividend income	.....	75,307.95
Income from unfunded securities and accounts	1,262.27	68,503.93
Contributions from other companies	.....	513,921.01
Total	291,762.27	707,815.31
Gross income	291,762.27	9,324,859.54
Deductions from gross income:		
Joint-facility rents	.....	301,263.08
Interest on funded and unfunded debt	48,000.00	1,672,469.30
Maintenance of investment organization	3,806.98	33,333.72
Income transferred to other companies	.....	100,170.67
Total	51,806.98	2,107,236.77
Net income	239,955.29	7,217,622.77
Disposition of net income:		
Dividend appropriations of income	240,000.00	6,428,137.35
Income balance transferred to profit and loss:		
Credit	.....	789,485.42
Debit	44.71	.....

The books of account from 1887 to 1915 do not reflect the receipt of the rental from the lessee, nor the disbursement of the interest and dividends. The above statement for the year is adjusted to show the result if these entries had been made.

Profit and loss account.—The profit and loss account, for the period from March 1, 1843, to date as shown by records of the Norwich and Worcester, is as follows:

Credits:		
Credit balances transferred from income		$1,203,785.64
Profit on road and equipment sold		3,300.00
Delayed income credits (net profit from steamboat operation 1861 to 1862)		423,724.16
Miscellaneous credits—		
Property turned over by land agent	$5,000.00	
Old claim collected	9,300.92	
Sundry credits unexplained	10,726.13	
Release of sinking fund	401,816.36	
Premium on capital stock	439,517.32	
Premium on bonds	96,113.00	
Gain in retirement of funded debt	50.00	
Other miscellaneous credits	9,545.99	
		972,069.72
Total		2,602,879.52

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Debits:		
Debit balances transferred from income		$414,300.22
Surplus applied to sinking and other reserve funds		170,995.57
Delayed income debit—surplus transferred to lessee		47,495.76
Miscellaneous debits—		
Depreciation of road and equipment	$314,422.40	
Adjustment of charges to road and equipment	20,342.99	
Loss on book assets	135,556.45	
Balance of loss account wreck of steamer *Atlantic*	16,932.54	
Fraudulent land claims	28,737.19	
Other miscellaneous debits	281.04	
Expense of issuing funded debt	797.63	
Adjustment of account with the Erie Railroad Company	132,639.86	
Loss on sale of Norwich and New York Transportation Company stock to the New England Navigation Company	110,000.00	
Premium paid on Norwich and New York Transportation Company stock	425.00	
Adjustment of book value of Norwich and New York Transportation Company stock	50.00	
Repairs to Norwich and New York Transportation Company boats	12,332.00	
Net proceeds of land sale turned over to the New York and New England Railroad Company	15,149.29	
Loss from guarantee of loans	15,597.96	
Loss from operation of steamboat *Commodore*	13,038.85	
Estimated value of old rail	10,000.00	
Other miscellaneous debits	30,908.24	
		857,211.44
Credit balance on date of valuation		1,112,876.53
Total		2,602,879.52

Only partial data is available for the period prior to December 1, 1853.

208 Investment in Road and Equipment.

The investment in road and equipment, including land, on date of valuation, is stated in the books of the Norwich and Worcester to be $5,417,182.82, made up as follows:

Construction:		
Charges—		
Cash	$3,170,236.81	
Bills payable	79,443.24	
Book transfer of surplus real estate	3,000.00	
Interest	116,140.24	
Advances from the New England Railroad Company	113,772.39	
Advances from the carrier	1,633,217.87	
Land at Worcester, Mass., conveyed by the Boston and Albany Railroad Company	42,529.00	
Cost of reacquisition of interest on the Junction Railroad	37,452.99	
		$5,195,792.54

Credits—		
Cash	325,481.15	
Advances from the New England Railroad Company repaid	13,037.11	
Settlement with the Providence and Worcester, in relation to Union Station at Worcester, Mass	16,291.50	
Bills receivable	9,665.00	
Book transfer of surplus real estate	39,096.00	
Erroneous charges by land agent deducted	28,737.19	
Division of cost of the Junction Railroad	60,735.27	
Miscellaneous credits	467.75	
		493,510.97
Net charges for construction		4,702,281.57
Other items:		
Charges—		
Loss on capital stock	513,574.02	
Loss from bad notes and book debts (apparently defaulted stock subscriptions)	99,409.55	
Loss on bonds	5,311.87	
Loss from operation of steamboats	238,764.35	
Loss on Massachusetts State stock	16,844.45	
Loss on Norwich City stock	2,528.26	
Loss on Worcester and Nashua Railroad Company stock	119,360.49	
Allowance for release of collateral	20,031.96	
Estimated value of tools and machinery	14,159.43	
Miscellaneous items, not definitely described	5,229.79	
		1,035,214.17
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Credits—		
Estimated depreciation charged profit and loss	314,422.40	
Miscellaneous credits	5,890.52	
		320,312.92
Net charges for other items		714,901.25
Book investment in road and equipment at date of valuation		5,417,182.82

The net total, $4,702,281.57, includes $42,478.62 called "estimated value of materials and supplies on hand February 1, 1869," which was the date when the lease of the property to the Boston, Hartford and Erie Railroad Company became effective. This is included in the total of $113,772.39 which represents the credit to the New England Railroad Company for advances. If the "other items" are eliminated, because they are improperly included in the account for investment in road and equipment, and the balance is further reduced by the agreed value of the equipment and personal property leased, $630,620.32, the amended balance will be $4,071,661.25, representing invest-

ment in road only. This balance, as adjusted, would, so far as it is resolvable into its constituent elements, comprise the following classes of outlay:

Recorded money outlay	$3,368,891.59
Notes payable at par	79,443.24
Advances	1,691,474.23
Less deductions not assignable specifically to any one or more of the classes of outlay:	
Proportion of cost of joint track of the Junction Railroad re-collected from interested companies	60,735.27
Amount of overcharges made in the account for investment in road and equipment, as relating to land purchased, transferred to profit and loss	28,737.19
Settlement by Providence and Worcester Railroad Company for land taken by it	16,291.50
Lands withdrawn from carrier uses and credited in the account for investment in road and equipment at	39,096.00
Agreed value of equipment leased	588,141.70
Notes receivable taken in payment for lands sold and credited in the account for investment in road at their face value	9,665.00
Cash proceeds of sales of real estate	301,899.91
Cash proceeds of sales of materials and buildings	6,940.27
Insurance recovered on property destroyed	1,176.20
Judgment recovered in connection with cost of freight station at Worcester, not definitely described but probably an actual recovery of money previously paid as land damages	5,572.68
Expenditures charged in the account for investment in road and equipment and re-collected	5,572.68
Rents and revenues collected and credited in the account for investment in road and equipment	8,417.76
Contribution, not otherwise described, credited in the account for investment in road and equipment	260.00

210 There was no separate account for equipment and the amount included in this total to represent the cost thereof can not be given. When the property was leased at February 1, 1869, all equipment then owned was delivered to the lessee and none was subsequently acquired. There was no record made of the value or cost of the equipment delivered to the lessee, but in 1897, after the lease had passed to the New England Railroad Company, the agreed value of the leased equipment was fixed at $588,141.70, which, with $42,478.62 representing material and supplies delivered to the original lessee in 1869, made $630,620.32 the liability of the lessee to the lessor to be discharged at the termination of the lease. In 1906, the carrier having succeeded as lessee, the equipment was recorded in its books as of the value of $469,100 and the remainder of the stated liability was described as machinery and tools, $77,223.67, and material and supplies, $84,296.65. The carrier, in its return of equipment, has included equipment in use on date of valuation, both owned and leased, as it owned equipment.

It has recorded its liability to the Norwich and Worcester in the sum of $630,620.32, which has been deducted from the book investment in road and equipment in lieu of the original cost of the property represented.

The carrier has stated that the foregoing outlays include $29,055.57 as the cost of certain lands classified herein as noncarrier lands. Of that amount, the chapter on original cost to date shows $28,980.57 as supported by the accounting records and $75 not so supported. The carrier also states that the outlays include $67,726.77 as the cost of lands classified herein as partly carrier and partly noncarrier, all of which is shown in the chapter on original cost to date as supported by the accounting records. The portion of the cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of those lands has not been determined.

Certain tracts, extending from Madison Street to Park Street and thence across the Common in Worcester, were abandoned and removed, but no deduction was made in the investment account therefor. The amount that should be deducted is not known. Title to the land is still held by the Norwich and Worcester and the cost is in the account for investment in road and equipment. The Norwich and Worcester made no return of abandoned property.

Original Cost to Date.

The original cost of the property owned by the Norwich and Worcester and used for common-carrier purposes on date of valuation, can not be accurately determined. The accounting records are incomplete and inadequate. There are some deductions in the property accounts for property sold or otherwise retired, but the records are not sufficient to warrant the statement that all property worn out, or withdrawn from carrier uses, was renewed by charges to operating expenses or completely written out of the property accounts. The obtainable accounting records, and a record of disbursements kept by the treasurer for the period for which the accounting records are incomplete, show the following outlays recorded as made for road, including land:

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Recorded money outlay:		
By the Norwich and Worcester	$3,368,891.29	
Charged as improvements on leased railway property—		
By the carrier	57,612.93	
By the New York and New England Railroad Company	29,165.71	
		$3,455,669.93
Notes payable at par value		79,443.24
Advances		1,691,474.53
From which should be deducted the portions not definitely ascertainable, that may be represented by—		
The proportion of the cost of a joint track called the Junction Railroad, re-collection from interested companies, credited at		60,735.27
Expenditures charged in the account for investment in road and equipment but re-collected from sundry individuals and companies, credited at		5,572.68
Rents and revenues collected and credited in the account for investment in road and equipment at		8,417.76
Amount of overcharges made in the account for investment in road and equipment, as relating to land purchased, transferred to profit and loss at		28,737.19
Agreed value of equipment leased		588,141.70
Settlement by the Providence and Worcester for lands taken by it, credited at		16,291.50
Lands withdrawn from carrier uses and credited at		39,096.00
Lands sold for notes receivable taken at their face value		9,665.00
Lands sold for cash proceeds of		301,899.91
Materials and buildings sold for cash proceeds of		6,940.27
Insurance recovered on property destroyed, credited at		1,176.20
Judgment recovered in connection with cost of freight station, credited at		1,214.33

These outlays may include some or all of the cost of lands classified by us as devoted wholly to noncarrier purposes, and they may include some or all of the indeterminable part of the cost of lands devoted partly to carrier and partly to noncarrier purposes, for it was not determined what part of the costs of these lands was included by the carrier in its balance on date of valuation, purporting to be its investment in miscellaneous physical property. The outlays may also include an indeterminable amount representing that part of the cost of property abandoned, sold or destroyed that is in excess of the credits made to the account for salvage, proceeds from sale, and loss from such property, for the Norwich and Worcester has made no return of abandoned property.

In addition to the foregoing data obtainable from records supporting the content of its investment in road and equipment account, the carrier has filed with this commission a statement in which $1,546.50 is shown as expenditures charged to other accounts, representing assessments

for public improvements, which it claims should be considered in arriving at the original cost of the property.

212 *Cost of lands.*—The Norwich and Worcester reports the original cost of all lands and rights owned, including carrier and noncarrier lands, as $969,730.77. In verifying these returns we have excluded $75 for one water right.

The return further includes $21,655.05 of costs that can not be allocated to parcels and which may be duplicated in the return. With respect to this item, the carrier returns $21,655.05 which it could not assign to parcels, and, on the other hand, it returns a number of parcels for which it could not ascertain the recorded costs, but for which it reported the considerations named in deeds and awards. Therefore, it is not improbable that this $21,655.05 is included, at least in part, in these considerations. Furthermore, the carrier disposed of certain lands, and these costs, that can not be allocated, may be applied, in part, to lands that it no longer owns. It will be seen, therefore, that a definite statement that the $21,655.05 is or is not duplicated in the return can not be made.

The return further includes costs of $183,027.94 which represent claimed expenditures for land, land damages, and other expenses in connection with the elimination of grade crossings.

The carrier has filed a claim for the Norwich and Worcester with our Bureau of Valuation, amounting to $30,153.20, in connection with the cost of grade-crossing elimination which includes a part of the cost of lands returned by the company. If the original cost of the lands is used in lieu of the ascertained present value of lands, and the carrier's claim is included in the cost of reproduction new, there will be a duplication of some indeterminate part of the amount of that claim. For that reason this item is hereinafter classified and explained separately from the items for land concerning which no further explanation appears to be necessary.

After excluding the above items the resulting balance would show $764,972.78 of cost, classified as follows:

Classification.	Cost supported by accounting records.	Amounts not supported by accounting records.
As a whole.		
Carrier lands owned	$555,701.33	$77,854.71
Carrier lands jointly owned, the Norwich and Worcester's portion	34,634.40	.....
Noncarrier lands owned	28,980.57	75.00
Lands classified partly as carrier and partly as noncarrier, owned	67,726.77	.....
In Massachusetts.		
Carrier lands owned	268,623.88	62,374.98
Carrier lands jointly owned, the Norwich and Worcester's portion	34,634.40	.....
Noncarrier lands owned	8,887.24	.....
In Connecticut.		
Carrier lands owned	275,116.63	15,479.73
Noncarrier lands owned	20,093.33	75.00
Lands classified partly as carrier and partly as noncarrier, owned	67,726.77	.....
Not allocated to States.		
Carrier lands owned (attendant costs)	11,960.82	.....

The carrier has stated that the foregoing outlays include $29,055.57 as the cost of certain lands classified herein as noncarrier lands. Of that amount, the section of this chapter devoted to cost of lands shows $28,980.57 as supported by the accounting records and $75 as not so supported. The carrier also states that the outlays include $67,726.77 as the cost of lands classified herein as
213 partly carrier and partly noncarrier, all of which is shown in the section of this chapter devoted to cost of lands as supported by the accounting records. The portion of cost of the partly carrier and partly noncarrier lands equitably assignable to the noncarrier uses of these lands has not been determined.

The recorded cost of land and land damages incident to the elimination of grade crossings, hereinbefore referred to, was assumed by the respective participants as follows:

Norwich and Worcester	$104,041.65
Others	78,986.29
Total	183,027.94

The proportion expended by the Norwich and Worcester has been verified in the accounting records and consists of recorded money outlay classified as for carrier lands owned and used. A statement has been submitted by the company for consequential damages in connection with the

elimination of grade crossings which it claims should be considered in the reproduction costs of its property. This claim has been classified as shown hereunder:

Items included in the land return	$143,354.45
Items not included in the land return	945.12
Total	144,299.57
Less amount allocated to other parties	114,146.37
Balance claimed by the Norwich and Worcester	30,153.20

Inasmuch as the total expenditures include such a large proportion of items appearing in the land return, the amount claimed as consequential damages must of necessity include an equal proportion of such items which, if allowed as part of the reproduction costs of the crossings would, to that extent, be a duplication of items, the amount of which can not be definitely stated, included as part of the original cost of lands if the original cost of lands is used in lieu of present value.

Cost of equipment.—The Norwich and Worcester has made no return of equipment, but the carrier has included in its return all equipment in use by it on date of valuation, whether owned or leased, as its owned equipment.

Investments in Other Companies.

On date of valuation the Norwich and Worcester owned $675,000 of the 4 per cent gold debentures of the New England Navigation Company, due January 1, 1955, acquired in exchange for the following securities of the Norwich and New York Transportation Company.

20,000 shares of stock, par value $500,000	$390,000
Notes	285,000

The Norwich and Worcester had previously acquired 20,800 shares, par value $520,000, for the following considerations:

8,000 shares for 7 per cent "steamboat" bonds at par	$200,000
3,777 shares for cash	94,850
9,023 shares for 1,289 shares of stock of the Norwich and Worcester at $175	225,575
Total	520,425

214 It disposed of these shares for the following:

For cash $20,000, at 150 per cent	$30,000
For New England Navigation Company debentures, $500,000 at 78 per cent	390,000
Total	420,000

The difference between the cost of acquisition and the amount realized is made up as follows:

Loss on 20,000 shares	$110,000
Premium paid on 170 shares	425
	110,425
Less premium on 800 shares sold at $37.50	10,000
Net difference	100,425

The amounts of $110,000 and $425 are shown in profit and loss as separate items; the amount $10,000 is hereinbefore described as a part of the profit and loss credit item "Net profit from operations of steamboats, $423,-724.16."

The Norwich and Worcester loaned its credit to the Norwich and New York Transportation Company to the extent of $462,502.95, of which there was repaid in cash $177,502.95 and the balance was exchanged for securities of the New England Navigation Company, as above.

Prior to the initial date of obtainable accounting records, the Norwich and Worcester acquired 2,500 shares of the capital stock of the Worcester and Nashua Railroad Company at par for the following considerations:

Cash	$25,000
Notes	25,000
6 per cent bonds due June 1, 1850	150,000
7 per cent bonds due Jan. 1, 1860	50,000
Total	250,000

The stock was apparently sold, and a loss of $119,360.49 was charged in 1850 to cost of road. The obtainable records indicate that a condition of the sale was the proposed surrender by the Worcester and Nashua Railroad Company of $200,000 of bonds held by that company. The stock had been pledged as collateral security for $150,000 of bonds, due June 1, 1850. The records do not disclose the consideration received from the sale of the stock.

Miscellaneous Physical Property.

The book investment in miscellaneous physical property on date of valuation is $3,017.88, stated in the annual re-

port to us for 1915 to represent real estate at Webster, Mass., $2,800, and at Oxford, Mass., $307.08. The obtainable records do not permit an accurate analysis of this account. This account should be increased by $28,980.57, the recorded cost of lands classified herein as noncarrier which is included in the account for investment in road and equipment, and by an amount not definitely ascertained, representing the cost of noncarrier lands returned with costs of $75 which could not be identified in the accounts. It should also be increased by an amount, not now ascertainable, which represents the noncarrier use of lands re-
215 turned with recorded costs of $67,726.77 which are classified herein as partly carrier and partly noncarrier.

Leased Railway Property.

On February 9, 1869, the entire property of the Norwich and Worcester was leased to the Boston, Hartford and Erie Railroad Company for a term of 100 years from February 1, 1869, at an annual rent of 10 per cent on its outstanding capital stock. It was provided that the Norwich and Worcester should retain the custody of its revenues and disbursements, paying over to the lessee any surplus after the payment of operating expenses, taxes, interest, and dividends, the lessee to make good and deficiency in income to meet these requirements. By an agreement of April 26, 1886, with the New York and New England Railroad Company, successor to the first lessee, the annual rent was reduced to 8 per cent on the stock, but the other provisions of the lease remained in force.

The lease was further amended on December 31, 1897, by an agreement with the New England Railroad Company, successor to the New York and New England Railroad Company, canceling the provision for the custody by the Norwich and Worcester of the income and disbursements, and providing for the payment of the interest on the outstanding funded and floating debt in addition to the 8 per cent dividend. This agreement stipulated that the inventory value of the equipment and personal property of the lessor, $630,620.32, should be a liability of the lessee, to be accounted for at the termination of the lease. Further provision was made for investment in permanent improvements of the proceeds from the sale of property

not needed for transportation purposes; and, for the payment by the issue of capital securities for such improvements upon the request of the lessee.

The carrier, as successor to the New England Railroad Company on July 1, 1898, pays an annual rent of 8 per cent on the outstanding preferred stock, the interest on funded and floating debt, the taxes, and contributes annually $2,500 for the maintenance of the investment organization of the Norwich and Worcester. The agreed rent is payable quarterly. The lease provides for the reimbursement of the lessee for any expenditures for additions and betterments agreed to by the lessor.

216 EXHIBIT 2.

Extracts from Texas Midland Railroad, 75 I. C. C. 1.

Appendix 3.

Page 108, at 122.

"To Whom Carrier Property Is Inventoried."

"Ordinarily carrier property is inventoried in the name of the owner; that is, the details are shown in the inventory of the owner and not elsewhere. In case of jointly owned property the details would appear in the inventory of each owner.

Where property is owned by one carrier and exclusively used by another carrier the details would appear in the inventory of the owner, but the total amount would be shown in the inventory of the user as property used by that carrier. To illustrate: The Boston & Lowell leases its property to the Boston & Maine. The details of that portion of the Boston & Maine system which is leased from the Boston & Lowell would appear in the Boston & Lowell inventory, but in the inventory of the Boston & Maine the cost of reproducing this property would appear in the used column. The Boston & Lowell inventory would ordinarily be bound up with and treated as a part of the inventory of the Boston & Maine system. All other properties making up that system would receive the same treatment.

It may sometimes happen that the details of a property will be given in the inventory of the user only, the amount

being stated in the inventory of the owner, but such an instance, if it occurs, will be especially noted in the inventory itself.

It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use
217 in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use. Where such an arrangement exists as to property which is of sufficient value to be of significance, the portion in which trackage or similar rights are granted is inventoried by itself and the fact and nature of the use described in the inventories both of the owner and the user.

This will be made clear by an illustration. The trains of the Texas Midland Railroad run from Paris upon the north to Ennis upon the south. Beginning at Paris the first 37 miles of line are owned by the Texas Midland; the next 14 miles between Commerce and Greenville are owned by the St. Louis Southwestern Railway Company of Texas, commonly known as the Cotton Belt; the remaining 74 miles are the property of the Texas Midland. It will be seen, therefore, that the use of this portion of the line between Greenville and Commerce makes up a part of the through line of the Texas Midland from Paris to Ennis.

The portion between Greenville and Commerce is made a valuation section upon the Cotton Belt and the various costs are determined with respect to that valuation section and reported in detail in the inventory of the Cotton Belt. The inventory of the Texas Midland shows the fact of this use and the valuation report upon the Texas Midland gives the terms and conditions of that use. The cost of reproducing this valuation section is not, however, carried into the used column of the Texas Midland.

The reason for this is obvious. If this reproduction cost appears in the used column of the Cotton Belt and
218 again in the used column of the Texas Midland, the cost has been duplicated. It has been the desire of the Commission to appraise all the carrier property operated by carriers subject to its jurisdiction, but to report that property but once. When the used column of all carriers covered by this appraisal is totaled, it should give the total reproduction costs of all common-carrier property in

the United States without duplication. This cannot be done if the claim of the carriers that all property over which a particular carrier operates shall be included as used both by the owner and by the user.

It is believed that the method adopted fully complies with the statute. For example, the portion of the Cotton Belt, above referred to, is inventoried. The fact of its use is referred to both in the inventory of the Cotton Belt and in the inventory of the Texas Midland. The conditions under which the use exists are set forth in detail both in the report upon the Cotton Belt and in that upon the Texas Midland. When in the valuation of these properties it becomes essential to know the cost of reproduction new or of reproduction less depreciation, the facts can be ascertained by reference to these reports; and the same of original cost if that can be shown. The physical property is not changed by this dual use. It can exist but once. If a part of the cost of that property is to be credited to the Texas Midland by virtue of the fact that it operates its trains over it, a corresponding portion should be deducted from the cost of the Cotton Belt. This property is used but once for the benefit of the public and ought not to be reported as twice used.

219 While the foregoing is true as to all pieces of property which are significant in character, there are many instances of small and comparatively insignificant items of railroad property which are used under lease with the owner which are not separately inventoried to the owner, and which could not be distinguished in the same manner as could these 14 miles. For example, the Texas Midland uses the passenger station of the St. Louis & San Francisco at Paris. That station is carried as a separate item in the inventory of the St. Louis & San Francisco and could be identified if desired. In reaching the station the tracks of the St. Louis & San Francisco are used by the Texas Midland to a limited extent. These tracks are not embraced in the inventory of the station, and the portion of the track which is used by the Texas Midland in entering the station is not inventoried separately from the other tracks of the St. Louis & San Francisco at that point. This had not been done, because it would involve an immense amount of labor without any corresponding beneficial result.

A carrier may lease for its city ticket office a room in a building belonging to some private party and used mostly for private purposes. That room, however, is used by the carrier for its purposes as a common carrier. It can scarcely be claimed that it is the duty of the Commission to attempt to segregate that room from the balance of the building and show with respect to it the various costs. And this would be true if the building were entirely owned by some other common carrier which used the balance of it for common-carrier purposes, in which event the entire building would be inventoried to the owner. This act must receive a sensible and practical interpretation.

220 These trackage rights, while often of great importance, run into most minute uses. A few feet are frequently involved. Sometimes the use will be occasional, but once a week, or even once a year. To say that the Commission must seek out every instance of that kind, make each of these pieces of track a valuation section, distinguish between those pieces which are used by one carrier in common with the owner, or by several carriers in common with the owner, would be to impose a most intolerable burden and to confuse beyond reason the reports themselves without practical benefit."

Decision.

Page 20.

"Property Used but not Owned."

"In addition to the use of property owned, many common carriers have made arrangements by contracts for the use of property for common-carrier purposes which is owned by others. In instances where property is used individually by a carrier for common-carrier purposes and is owned by some party other than a common carrier the Commission includes the property in detail in the inventory of the using carrier. The inventory also includes a description of the ownership and of the use. Ordinarily where property is used by one carrier for common-carrier purposes and is owned by another carrier, the inventory of the owning carrier shows in detail the three cost values required by the act to be reported. The inventory also shows the terms of the use. The inventory of the carrier using such a piece of

property shows the totals for the three cost values, and also sets forth the ownership and terms of the use. It
221 sometimes happens that the details with respect to a property of this kind are reported in the inventory of the using carrier. This is true in instances where the whole property of a common carrier is operated by another common carrier and the records of the property are in the possession of the using carrier. Where private property is partially used by a carrier for common-carrier purposes, but it is impossible or impracticable to segregate such property and place a separate value upon it, we report the rental paid. In an instance of that kind the property itself is not included in any inventory made by us. Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common-carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The extent and terms of the use appear also in the inventory of the using carrier or carriers.

It has been our endeavor to adopt a method with respect to this class of property which will permit of reporting the three cost values for all property used for common-carrier purposes without duplication. When it is borne in mind that many railroads are not operated exclusively by their owners, but that certain portions thereof are used by one or more carriers by virtue of trackage rights, etc., it is apparent that duplication of values for such jointly used property will result unless a proper course of procedure is pursued. The necessity of securing reproduction new and reproduction less depreciation values without duplication is manifest, since these values must necessarily be considered as factors entering into the determination of an ultimate value of railroad property.

222 In its protest the carrier makes no complaint concerning the property used exclusively by it, but insists that the procedure above outlined is erroneous to the extent that it results in omitting from the inventory the three cost values of property used but not owned by it and the value of its right to use such property.

As stated above, in instances where private property is used only partially by a carrier for common-carrier purposes the property does not appear in any inventory made by us. Items of this character are, as a rule, insignificant

in amount. To attempt to ascertain the cost figures for property of this kind would entail the expenditure of a large amount of time and money entirely out of proportion to the benefits to be derived from the results which would be obtained. For example, in practically every large city in the country carriers have rented offices in public buildings for the sale of tickets, solicitation of traffic, etc. These buildings are owned by private business interests. The space occupied by the carrier devoted to common-carrier purposes is but a small part of the entire building. It can safely be assumed, we believe, that the act never contemplated an appraisal of property which is merely incidental to the common-carrier business. In instances of this kind we report the rental paid. Since under the accounting rules of the Commission the carrier is permitted to deduct rental paid from the revenue derived from operation, this method is as fair to the carrier as to the public. Of course if the amount of the rental paid is more than the value of the use, the public will be injured to the extent of the amount in excess of a fair rental so far as the particular carrier is concerned, while, on the other hand, if the amount of
223 the rental paid is less than the value of the use the public will be benefited to a corresponding extent.

And, further, the adoption of a rule requiring the inclusion in the inventory of every carrier of every piece of property used by it for common-carrier purposes would lead to absurd results. During certain periods of the year a large number of railroads are called upon to move the cars of circus companies. These cars are used by the transporting carrier for common-carrier purposes, but no one can seriously contend that the law contemplates the ascertainment of the cost values for such cars with credit therefor in the inventory of the using carrier. It follows that our practice with respect to partially used privately owned property is reasonable, and the results obtained thereunder are not in conflict with a correct interpretation of the act.

It has also been stated above that where property is owned by a common carrier and is used by it partially with another carrier or carriers for common-carrier purposes, such property is included in detail in the inventory of the owning carrier, and the use is described in that inventory and also in the inventory of the using carrier or carriers. This is a correct statement of the general rule, but the

method pursued varies with the circumstances of the particular case.

In the case under consideration the carrier uses jointly with the owner that portion of the St. Louis Southwestern Railway of Texas, commonly known as the Cotton Belt, between Commerce, Tex., and Greenville, Tex., 13.97 miles in length, as a part of its main line. This portion of the Cotton Belt forms the connecting link between two pieces of track owned exclusively by the Texas Midland. Without it the carrier would be unable to perform through transportation service between points located north and south, respectively, of this particular portion of the Cotton Belt. The 13.97 miles has been considered as a single valuation section. It has been inventoried and priced by itself. Cost of reproduction new and cost of reproduction less depreciation for it will be stated separately. This detailed information will appear in the inventory of the Cotton Belt when completed, with a statement that this section is used by the Texas Midland, together with a description of the terms of the use. In the tentative valuation under consideration it is stated 'the tracks of the St. Louis Southwestern Railway Company of Texas between Greenville and Commerce, a distance of 14 miles, are used under a trackage arrangement to unite the two pieces of the Texas Midland * * *,' so that if it becomes essential it will be possible at any time to refer to the inventory of the Cotton Belt and ascertain the cost values for that particular piece of property.

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The allegation has been made that as a result of this practice the valuation which has been served in this proceeding is incomplete, for the reason that the valuation of the Cotton Belt has not been made public, and therefore the cost values of this 13.97 miles used by the Texas Midland are not included in any records available to the public. If the wishes of the carrier in this regard were to be followed, we would be unable to announce the valuation of any railroad which uses property for common-carrier purposes owned by another carrier or carriers until such time as the valuation of the other carrier or carriers is completed. This would seriously embarrass the valuation work and could not result in any benefit to the public. We would not be justified, therefore, in delaying the service of the tentative valuation of a particular car-

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rier until the completion of the valuations of other carriers which would include detailed figures with respect to property used but not owned by that carrier.

There is, however, a considerable amount of jointly used property which will not be separately inventoried and for which detailed figures will not be reported separately. Detailed information of this kind could only be secured after the expenditure of a large amount of time and money, and it is felt that the result obtained would not be commensurate with such expenditures. Certain classes of trackage rights are illustrative. Many instances have been found where a carrier secures the right to use the tracks of other carriers for common-carrier purposes for distances ranging from 0.01 of a mile upward. Sometimes the right to use these tracks is only occasional. The restricted right to use these tracks is merely incidental. The tracks over which such inconsequential and incidental rights of use are granted are inventoried as a part of the property of the owner; reference is made in that inventory to the use and also in the inventory of the using carrier or carriers, so that the statute will be literally complied with, because every piece of railroad property which is owned or used for common-carrier purposes will be inventoried.

In addition to its claim that the three cost values of the property used but not owned should be included in its inventory, the carrier asserts that it is our duty to report separately a figure as the value of the right to use. It is a sufficient answer to this contention to state it is now universally accepted that it is the fair value of the property used by the public service corporation in serving the public which is to govern in fixing rates. *San Diego Land Co.* v. *National City,* 174 U. S., 739. This being true, the value of that property can not be increased or diminished by contracts or other arrangements between the carriers themselves. In the absence of an improper payment as rental the public is not concerned with the acts of carriers between themselves. The law requires the ascertainment of values for property owned or used, but not the value of the use.

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The attempt to fix the value of use would be speculative, because of the absence of any sound basis upon which to proceed, and if obtained would result in the inflation of the property values of the carriers upon which the public may

be required to pay a fair return. Indeed, such a finding by us would have the effect of inviting the carriers to make arrangements between themselves with the view of increasing the value of their property.

It should be further noted that if the carrier is correct in its claim that the right of joint use may be of more value than the rental paid and that therefore the Commission should appraise this right, and we do not intend to intimate that this can be so, still in such event the carrier should make its claim and introduce its evidence showing the value of the use to the end that an intelligent finding might be had. The mere putting of the property into the inventory would signify nothing and would only result in duplication.

When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress, and the public will be informed with respect to every piece of property used in serving the public,
227 with the single exception of that insignificant portion which is privately owned and partially used by common carriers. The inventories of the individual carriers will contain the cost values in detail with respect to property owned; the cost values in detail for property exclusively used by them but owned by a non-carrier; total cost values for property exclusively used by them but owned by a common carrier; a description of the terms and use of jointly used property of others with a reference to the report of the owning carrier for details in regard thereto; and a description of the terms and use of jointly used property owned by them with a reference to the reports of the using carrier or carriers for details in regard thereto. All the property used in serving the public will be inventoried and valued, and will be inventoried and valued once and only once. There will be and should be no duplications.

It follows that the method adopted is approved."

228 EXHIBIT 3.

Before the Interstate Commerce Commission.

Valuation Docket No. 311.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY et al.

Application for Rehearing.

The petitioners New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, Boston and

Providence Railroad Corporation (Massachusetts), Boston and Providence Railroad Corporation (Rhode Island), Providence, Warren and Bristol Railroad Company, The Harlem River and Port Chester Railroad Company, Holyoke and Westfield Railroad Company, Providence and Worcester Railroad Company, Chatham Railroad Company and Norwich and Worcester Railroad Company (hereinafter together referred to as the Carrier) respectfully make application to the Interstate Commerce Commission for rehearing in respect of the following matters involved in the decision and order of the Commission dated November 13, 1929, made public and served on the Carrier
229 on or about January 14, 1930, purporting to be the final report by the Commission of the value of the property owned or used by the Carrier:

1. The failure of the Commission to assign any value for the rights of the Carrier to use the Grand Central Terminal and the approaches thereto;

2. The failure of the Commission to assign any value for the rights of the Carrier to use the property of The Boston Terminal Company; and

3. The action of the Commission in valuing the property "for rate-making purposes."

I.

The Carrier's Rights to Use Grand Central Terminal and Approaches Thereto.

The section of the report dealing with these rights is entitled "Terminal Property at New York City." The Commission has failed to assign any value for the rights of the Carrier to use the tracks of the New York and Harlem Railroad Company from Woodlawn Junction to Forty-third Street, New York City, or for its right to the joint use with The New York Central Railroad Company of the Grand Central Terminal.

The agreements, leases, statutes and other data establishing the Carrier's rights were submitted at the hearing on the Carrier's protest of the tentative valuation.

The Carrier's rights to the use of the tracks from Woodlawn to Forty-third Street were acquired by agree-
230 ments with the New York and Harlem dated January 22, 1846, and March 17, 1848, authorizing the

New York and New Haven, the Carrier's predecessor, to exercise them during the term of its charter, which was perpetual. The second agreement was filed with the Secretary of State of New York pursuant to an act of the Legislature of New York confirming the agreement as a franchise. The indenture of August 1, 1873, whereby the New York and Harlem leased its entire railroad to the New York Central for 401 years was made expressly subject to the rights of the New York and New Haven to use that part of the railroad from Woodlawn to Forty-third Street and the New York Central covenanted to perform the New York and Harlem's obligations under the agreement of March 17, 1848.

The rights of the Carrier and the New York Central in the property now occupied by the Grand Central Terminal were precisely the same prior to August 1, 1873, when New York Central leased the railroad of the New York and Harlem. Under the tripartite lease of November 1, 1872, the New York and Harlem as owner of the property was to construct the original Grand Central Depot at Forty-second Street and lease it to the New York and New Haven, the Carrier's predecessor, and the New York Central for the joint use and occupation of all three companies. The rights of the New York Central were not only the same in substance as those of the New York and New Haven, but granted by the very same language in the very same instrument, and they were to continue during the terms of their respective charters, the New York and New Haven's being perpetual. In the indenture of August 1, 1873, the
231 New York Central covenanted to perform the obligations of the New York and Harlem under the tripartite lease. Upon the construction of the present Grand Central Terminal the Carrier and the New York Central entered into an agreement dated July 24, 1907, whereby they use the terminal property and approaches jointly and share the expenses in proportion to the use made by each.

The figures submitted by the Carrier at the hearing on its protest, as set forth in the report, show the percentages of use by the Carrier of the several parts of the property as of June 30, 1915, to have been:

Grand Central Terminal	41.93%
Fifty-ninth Street to Mott Haven	41.93%

Mott Haven to Woodlawn	62.95%
Mott Haven Yard	43.74%
Power Distribution System	24 %

and the Carrier placed a value of $55,490,531 on its rights in the property based on that proportion of use.

The rights of the New York Central in the railroad of the New York and Harlem under the lease of August 1, 1873, were made therein expressly subject to the right of the Carrier to use the tracks from Woodlawn to Forty-third Street, and prior to that lease the rights of the New York Central in the Grand Central Depot were precisely the same and derived through the same instrument, the tripartite lease of November 1, 1872, as those of the Carrier. The lease from the New York and Harlem to the New York Central, to which the Carrier was not a party, could not change the rights of the Carrier in the property. Yet the Commission has valued the entire property to the New York Central in conformity with its rule, *estab-*
232 *lished for rate-making purposes,* that where a carrier has an *exclusive* lease of the entire railroad of another carrier the entire property will be included in its inventory as though it were the owner, but where the rights of a carrier are *not exclusive* the entire value of the property will be assigned to the owning carrier or its exclusive lessee.

This rule was adopted in the early valuations under the Act of 1913 at a time when, as the Commission said in *Texas Midland Railroad,* 75 I. C. C. 1, 6, decided July 31, 1918:

"The act does not specify any purpose for which a valuation is to be found or to which the valuation is to be put. * * *"

The Amendment of 1920 making the final valuation prima-facie evidence, not only for rate-making purposes, but also for purposes of recapture and consolidation, had not then been passed. Accordingly the Commission assumed that the valuations would be used chiefly for rate-making purposes, and for that purpose, where the Commission is concerned primarily with the value of the property of the carriers as a whole rather than the value as between one

carrier and another, it was deemed sufficient to treat the carrier having the exclusive lease as the owner and simply note in the inventory of the other carriers having rights therein the extent and terms of their use. As stated in the *Texas Midland* case, p. 21:

"Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The ex-
233 tent and terms of the use appear also in the inventory of the using carrier or carriers"—

it being only the "extent and terms of the use," not the value, which appear in the inventories of the using carriers, to the end that—

"When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress and the public will be informed with respect to every piece of property used in serving the public. * * * All the property used in serving the public will be inventoried and valued, and will be inventoried and valued once and only once."

Now that the Amendment of 1920 makes the final valuation prima-facie evidence for purposes of recapture and consolidation, such rights of use must necessarily be separately valued and assigned to the using carriers in proportion to their respective interests in order that the amount of excess earnings to be taken from any particular one of them or the amount of securities to which it may be entitled upon consolidation may be accurately determined.

No duplication would result from valuing their rights to the using carriers. The value of those rights would be included in their inventories, and the value of the property subject to those rights would be included in the inventory of the owning carrier or its exclusive lessee. The sum of the two valuations would equal the value of the property and no more. The property will have been valued "once and only once."

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II.

The Failure of the Commission to Assign Any Value for the Rights of the Carrier to Use the Property of the Boston Terminal Company.

The section of the report dealing with these rights is entitled "The Boston Terminal Company." The act of the Legislature of Massachusetts of June 9, 1896, incorporating The Boston Terminal Company provided for the construction of the South Station in Boston, the property to be owned by the terminal company for use by the several entering railroad companies, and "all said railroad companies upon the completion of said station *shall* use the same" instead of their existing stations, and "shall pay for such use of said station and facilities" in the proportions in which they use it, and the courts were given power to compel the making of such payments. The Carrier now owns 80% of the capital stock of the terminal company and made use as of June 30, 1915, of 75% of its station facilities. This statute vested in the Carrier a right of use in the nature of a franchise upon which the Carrier placed a value of $17,802,000.

The Commission valued the entire property to the owning carrier, The Boston Terminal Company, assigning no part thereof to the using carriers. Following its rule laid down in the *Texas Midland* case it simply stated the "extent and terms of the use" in the inventories of the carriers, but assigned no value therefor. In its report the Commission stated that the omission of a value for the Carrier's rights in this property "is in accord with our previous decisions and our finding herein with respect to the contentions
235 that a finding should be reported for its right to use the Grand Central terminal properties in New York City." The same arguments which the Carrier now addresses to the Commission in respect of the New York terminal property therefore apply with equal force to the Boston terminal property.

III.

The Action of the Commission in Valuing the Property "for Rate-making Purposes".

The fundamental error of the Commission in its report and order lies in its conception that the value it should find is the value "for rate-making purposes."

Subdivision (*a*) of section 19*a* of the Interstate Commerce Act provides—

"That the Commission shall, as hereinafter provided, investigate, ascertain and report the value of all the property owned or used by every common carrier subject to the provisions of this act."

Nothing here or elsewhere in the act authorizes the Commission to find a value "for rate-making purposes" or for any other particular purpose or limited use. The Commission cannot decline to value any of the property owned or used by the Carrier on the ground that it forms no proper part of a rate base. In fact, the property to be valued is not confined to property used "for the purposes of a common carrier" under subdivision (*b*) (Second), but includes property "held for other purposes" under subdivision (*b*) (Third).

In respect of jointly used property the Commission conceives that it performs its full duty by including the
236 value of the property in the inventory of the owning carrier, treating an exclusive lessee as an owner, and is not required to apportion any part of that value to the using carriers even though their perpetual rights to its use have an actual commercial value which the Commission recognizes. In connection with the Grand Central terminal property the report states:

"We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole."

It goes on to say, however, that "for the purpose of finding a rate base" it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers.

This attitude might find support were the Commission still valuing the properties of the carriers as a whole for rate-making purposes on the theory set forth in the *Texas Midland* case. Since the Amendment of 1920 making the final valuation prima-facie evidence not only for rate-making, but also for recapture and consolidation where the value of the separate property of each individual carrier becomes important, the word "every" in subdivision (*a*) of section 19*a* directing the Commission to "report the value of all the property owned or used by *every* common carrier" assumes added significance. The Commission must value the property owned or used by each indivdual carrier as a separate unit, and it is not a sufficient compliance with the statute merely to state in a particular carrier's inventory the "extent and terms," in the language of the *Texas Midland* case, of its right to use property.
237 Where, as here, the Commission expressly recognizes that such rights are valuable, that value must be ascertained and reported.

Wherefore the petitioners respectfully pray that the Commission reopen the proceeding for reargument, reconsideration and rehearing upon and in respect of each and all of the matters in this petition contained. By making this application for rehearing in respect of those parts of the report and order which are referred to herein, the petitioners do not accept or assent to any part of said report or order or acknowledge the correctness of any valuation or finding made therein.

Respectfully submitted,

JOHN L. HALL,
CHARLES O. PENGRA,
JAMES GARFIELD,
Attorneys.

30 State Street, Boston, Massachusetts.

238 *Rule to Show Cause.*

Filed July 3, 1930.

* * * * * * *

Upon consideration of the petition filed in the above entitled cause, it is, this 3d day of July, A. D. 1930,

Ordered, That the defendant, the Interstate Commerce Commission, show cause on or before the 30th day of July, A. D. 1930, why the prayer of the petition should not be granted, and the writ of mandamus issued, compelling the defendant, the Interstate Commerce Commission to perform its ministerial duty in accordance with the provisions of the Interstate Commerce Commission Act, and investigate, ascertain and report the true value of all the carrier's property and to include therein the value of the estates and franchises of the carrier in the tracks of the New York and Harlem Railroad Company for Woodlawn to Forty-Third Street and in the Grand Central Terminal and the Boston Terminal Company Properties and to take such other action as by law is required, provided a copy of this order and the petition are served upon the defendant on or before the 10th day of July, A. D. 1930.

By the Court.

JESSE C. ADKINS,
Justice.

Return.

Served a copy of the within order upon the defendant, Interstate Commerce Commission, on the 3rd day of July, 1930, by serving G. B. McGinty, Secty. Personally.

EDGAR C. SNYDER,
Marshal.
By CHAS. G. COWLEY,
Deputy.

239 Filed November 21, 1930.

In the Supreme Court of the District of Columbia.

At Law.

78291.

THE UNITED STATES OF AMERICA at the Relation of the NEW York, New Haven & Hartford Railroad Company et al., Relators,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

Answer.

Comes now Interstate Commerce Commission, the respondent named in the above-entitled action, and by leave

of the Court withdraws its motion to dismiss the petition and discharge the rule to show cause heretofore filed herein, and answering says:

1. Answering paragraph I of the petition, respondent admits for the purposes of this suit, the allegations therein contained.

Respondent alleges that third parties not parties to this proceeding have rights vitally affected by any determination of the issues hereinafter raised and that mandamus should not, therefore, be issued in this cause.

2. Answering paragraph II of the petition respondent admits that it entered upon an investigation pursuant to the provisions of the Valuation Act to "ascertain
240 and report the value of all the property owned or used" by the relators and that about December 2, 1922, it issued a tentative report of its findings made in accordance with said Valuation Act, and admits that it did not report the value of the carrier's rights to use the passenger terminals and the approaches thereto in New York City and in Boston, for the reasons fully set forth at pages 31 to 37 of Exhibit 1 attached to the petition; that the carrier filed a protest against the tentative report and that extensive hearings were held and evidence submitted upon all the issues raised by the protest, and a large amount of testimony and evidence was presented by the carrier in support of its protest relating to the terminals and approaches. It admits that the issues raised were submitted to the Commission on May 18, 1926, and fully discussed by distinguished counsel representing the carrier, and that on January 14, 1930, the Commission made its report to Congress as required by the act, and served the same upon the carrier, which report is attached to the petition as Exhibit 1, and is here referred to and adopted as stating the consideration given by the Commission to the carrier's claims and as the decision thereon. As stated at page 90 of the report, Exhibit 1, the methods of valuation, including those governing the consideration of the terminals determined upon in the first valuation case, the Texas Midland Railroad, were incorporated in this report by reference
241 and are adopted here with the report itself (Exhibit 1) as a part of this answer to the petition.

Respondent admits that the carrier filed a petition to reopen and reargue the stated issues involved in the final

report, a copy of which petition is filed as Exhibit 3 to the petition herein, and that the petition for rehearing was den-ed by the respondent as alleged and it denies each and every allegation of paragraph II not herein expressly admitted to be true.

Respondent alleges that the jurisdiction to *de*determine the issues here raised is committed to it by Congress and that in the exercise of its judgment and discretion it fully exercised its jurisdiction and fully decided the issues before it and that mandamus can not be made to serve the office of an appeal, writ of error, or certiorari to review and correct its decision.

3. Answering paragraph III of the petition, respondent admits that the passenger trains of the carrier operate from the Grand Central Terminal in New York to South Station in Boston; that the carrier engages in a general passenger-carrying business and has held itself out by tariffs, regularly filed with the Commission, and by schedules of service, regularly published, to carry passengers to and from these terminals; that the carrier serves a large number of passengers at these terminals, and that such service is a great convenience to the traveling public.

242 Respondent admits that the terminal property and approaches in New York consist of the Grand Central Terminal facing on 42nd Street in New York City, approximately 12 miles of tracks from Woodlawn Junction into the terminal, a portion of the coach yard at Mott Haven, and the electrical generation and transmission system, and admits this property is jointly used by the carrier and the New York Central Railroad Company but alleges the carrier's use is by virtue of certain written contracts referred to in paragraph VII of the petition and in the Commission's report, Exhibit 1, and that said property is owned and used by the New York Central, or its lessor the New York and Harlem. Respondent admits that at the hearing before it the carrier claimed and presented evidence purporting to show its proportionate use and the alleged value of said contractual rights to the use of the said property as shown in the tabulation in the petition, but respondent specifically denies that the carrier has any estate in the property and refers to its report, Exhibit 1, attached to the petition for its conclusions respecting such claims.

Respondent admits the terminal property and approaches in Boston consist of the South Station and the tracks into and out of it for a distance of nearly one mile; and that it is owned and operated by the Boston Terminal Company and is jointly used by the carrier and the New York Central Railroad Company, as lessee of the
243 railroad of the Boston and Albany Railroad Company. It admits that the carrier offered testimony to the effect that its proportion of the total use of this property, as of valuation date, was 75 per cent and admits that the carrier claimed $17,802,000 as the value of its proportionate use. Further answering said paragraph III, respondent denies each and every material allegation of said paragraph not herein expressly admitted to be true and specifically denies that the carrier's rights to operate its trains into and out of the said terminals are either absolute or perpetual, and refers to its report, Exhibit 1, pages 31-37, 44, 203 for its position concerning the carrier's contractual rights.

Further answering paragraph III respondent alleges that the allegations of the petition and those of the answer herein above made thereto place in issue the title to property and that mandamus is not an appropriate remedy for the determination of such issue.

4. Answering paragraph IV of the petition, respondent admits that it was under a statutory duty to value "all the property owned or used by every common carrier" and to report the value thereof pursuant to the Valuation Act; it admits the correctness of the quotations from Section 19a and refers to the full and complete text of said Section 19a of the act for a definition of its statutory duty. Respondent denies that the carrier's interpretation of
244 the statute is a correct interpretation and alleges that it has fully complied with said statute and has fully performed its duty of valuation thereunder, as is hereinafter more fully set forth.

Further answering said paragraph IV, respondent denies each and every material allegation thereof not herein expressly admitted to be true.

Further answering said paragraph IV respondent alleges that it necessarily had to interpret the statute in order to determine its duty thereunder, that the interpretation of the statute involved the exercise of judgment and

discretion, and that the carrier is attempting to require the respondent to make a particular interpretation of the act not in accordance with its proper judgment and discretion.

5. Answering paragraph V of the petition, respondent admits that the whole steam railroad of the New York & Harlem Railroad Company is now leased to the New York Central for the term of 401 years from April 1, 1873. It admits that the carrier contends, as set forth in said paragraph, and that these contentions were incorporated in the carrier's protest, were made the subject of testimony at the hearing, and are considered and discussed by the respondent in its final valuation under the headings alleged. Respondent admits that it has not reported a specific value for the carrier's right of use of the property; and that it decided that in ascertaining the value "for rate-making purposes" of "property owned or used" by the carrier no specific value should be reported for these rights. Respondent admits the correctness of the quotations from its report and refers to the said report, Exhibit 1, for the full and complete text of its decision. Further answering said paragraph, respondent denies each and every allegation not herein expressly admitted to be true and specifically denies that it has arbitrarily refused to find a value for what are admitted in its report to be valuable rights of the carrier or that it has acted arbitrarily in any manner whatsoever in connection therewith; and alleges that it considered each and every contention of the carrier as set forth in said paragraph V, and, in the exercise of its judgment and discretion, decided said contentions adversely to the carrier as set forth in its report attached to the petition as Exhibit 1.

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Further answering said paragraph V, the Commission alleges that it has valued all of the physical property mentioned in the petition; that the entire New York Terminal property was inventoried in detail and valued together with all intangible elements of value inhering therein by the respondent in its final report on the value of the railroad property of the New York Central Railroad system (including its lessor, the New York and Harlem Railroad Company); that the carrier's joint use is therein set out; that in Exhibit 1 attached to the petition, the use of this

property by the carrier is referred to at pages 31-
246 36, 44, 93, and 203; that the entire physical property of the Boston Terminal Company was inventoried in detail and likewise valued by the Commission in its final report on the value of that company's property, that the carrier's joint use of this property was referred to in said report on the Boston Terminal Company's value, and that in the respondent's report on the value of the carrier, Exhibit 1, said joint use is referred to and set out on pages 31 and 203. Respondent alleges that the carrier is a joint user of these terminal properties by virtue of trackage rights as set forth on page 44 of Exhibit 1 attached to the petition and hereinbefore adopted as a part of this answer.

Further answering said paragraph V respondent alleges that in order to inventory and value the "property owned or used by every common carrier" it had to interpret the phrase "property owned or used"; that in the exercise of its judgment and discretion it interprets the act to require the inventory and valuation of each piece of "property owned or used" to the owning carrier or an operating lessee of the owning carrier, and that said inventory and valuation of the property should be exclusive of any value of the use. Respondent further alleges that its rules and regulations and its methods and decisions all follow this interpretation of the act; that in making the final report complained of, the Commission interprets the act as requiring a differentiation between the joint use of terminal
247 facilities under trackage rights or terminal contracts for a rental varying with the extent of the use, and the use of all the railroad property of a nonoperating owner by an operating lessee with full control and possession of the property under the lease, and respondent refers to Exhibit 2 attached to the petition for a statement of its rules, regulations, and methods of valuation adopted by it pursuant to the authority given it by statute to promulgate rules and regulations having "the full force and effect of law." Respondent further alleges that the methods of valuation here drawn in question have been followed in all of its more than 800 valuation reports published to Congress since the beginning of its work under the Valuation Act.

Further answering paragraph V, respondent alleges that the allegations of the petition and those of the answer

hereinabove made show that the carrier seeks to have this Court annul, set aside, and suspend a final valuation made by the respondent in accordance with the provisions of Section 19a of the act, and to have the respondent change its rules and regulations and revise its published reports in respect of matters committed by Congress to the respondent's jurisdiction.

6. Answering paragraph VI of the petition, respondent admits that subdivision (4), erroneously alleged as subdivision (2), of Section 15a provides that when the value of the railway property of any carrier held for and used in
the service of transportation has been finally ascer-
248 tained under Section 19a, the value so ascertained
shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value under Section 15a and refers to the full and complete text of Section 15a for its authority and duty to determine a value "for rate-making purposes." Respondent admits that in the ascertaining of a value for rate-making purposes of the carrier's physical property it has refused to place a specific value upon the carrier's contractual rights of use for reasons set forth in its report attached to the petition as Exhibit 1. It admits that the rent paid by the carrier for these rights of use is chargeable to joint facility rents in determining the carrier's "net railway operating income," as defined in subdivision (1) of Section 15a; it admits the correctness of the quotation from its report and refers to pages 34 and 36 of its report, Exhibit 1, for the reasons for its determination that duplication would result from reporting a specific value for the carrier's contractual rights to jointly use the property in issue. Respondent admits the substantial correctness of the paraphrasing in the petition of various subdivisions of Sections 5, 15, 15a, 19a, and 20a but refers to the full and complete text of said sections for its power and duty thereunder. Respondent further answering paragraph VI admits that the whole value of the New York Terminal property is included here to the New York Central. Respondent also admits that for purposes of group rate making
it has recognized New England as a separate rate
249 group from Trunk Line territory and that the entire
system of the carrier has been included in the New

England group and the New York Central has been included in the Trunk Line territory.

Further answering said paragraph VI, respondent denies each and every material allegation of said paragraph not herein expressly admitted to be true and alleges that many of the allegations thereof are carrier's conclusions of law and are argumentative and do not call for respondent's answer by affirmation or denial and respondent specifically denies that it was without authority to report a value for "rate-making purposes" or for any other particular purpose; or that it has exercised legislative power not vested in it by law; or that proper or any allocation of the value of the jointly used New York City terminal facilities between the carrier and any other parties is essential for rate-making purposes.

Further answering paragraph VI of the petition, respondent alleges that the allegations of said paragraph of the petition and the allegations of the answer hereinabove made thereto raise an issue of the correctness of an interpretation of the statute made by the Commission in the exercise of its judgment and discretion and respondent alleges that mandamus should not be used to require it to exercise its discretion in a particular manner.

7. Answering paragraph VII, respondent admits that the carrier's contractual rights are commercially
250 valuable as set forth in its report attached to the petition as Exhibit 1 and heretofore adopted as part of this answer. Respondent admits that subdivision (b) of Section 19a directs it to "ascertain and report separately other values, and elements of value, if any, of the property." It admits the correctness of the excerpts from its report and refers to the full and complete text of the report for the reasons for its decision.

Further answering paragraph VII, and particularly parts A and B of said paragraph of the petition, the respondent admits that, except in particulars hereinafter specified, the matters of fact alleged in respect to the history, development, and contractual relationships of the several corporations as alleged in this paragraph are substantially correct; it further admits the correctness of the quotations as made by the carrier from the pertinent statutes, agreements, contracts, and other documents, but it alleges that the entire statutes, agreements, and contracts are

material and necessary to a true interpretation of the carrier's rights, and alleges that said statutes, agreements, and contracts contain the hereinafter quoted stipulations which are especially relevant and material to a determination of the nature of the carrier's rights.

Respondent alleges that an Act of the Legislature of New York, passed May 11, 1846, provided, *inter alia*, authority to the carrier—

* * * to continue and extend their railroad from the dividing line of the States of New York and Con-
251 necticut, * * * to the New York and Harlem Railroad Company's line * * * and to unite or connect with said New York and Harlem at or near Williams Bridge.

* * * * * * *

Sec. 10. The Legislature may at any time alter or repeal this Act.

Respondent also alleges that the contract of March 17, 1848, contained the following especially pertinent provisions in addition to the portions quoted by carrier, to wit:

This agrement and contract of transportation made and concluded this seventeenth day of March, in the year one thousand eight hundred and forty-eight, between The New York and Harlem Rail Road Company of the one part and The New York and New Haven Railroad Company of the other part witnesseth * * *:

* * * * * * *

Sixth. It is mutually understood and agreed that the New York and New Haven Railroad Company shall pay, * * *, and the New York and Harlaem Railroad Company shall receive *as full compensation for the use and occupation of their track or tracks as aforesaid*, a certain sum for each passenger transported by the said New York and New Haven Railroad Company in their several trains, to be dependent upon and adjusted by the total number so transported daily * * *.

* * * * * * *

252 Eleventh. It is mutually understood and agreed that the New York and Harlem Railroad Company shall without delay proceed to grade and *construct a second line of rails or track* with heavy H rails from the termination of their present double track to the aforesaid point of junction, * * *.

* * * * * * *

Thirteenth. It is mutually understood and agreed that the New York and Harlem Railroad Company *shall keep its road* from the aforesaid point of junction to the termination of the part thereof to be used by the New York and New Haven Railroad Company *in good and sufficient repair* to ensure the greatest speed, accommodation and safety to passengers. (Italics ours.)

Respondent alleges that the 401-year lease by the New York and Harlem to the New York Central contained the following especially pertinent provisions in addition to those quoted by the carrier, to wit:

First. The said party of the first part hereby demises and leases unto the said party of the second part, its successors and assigns, the said railroad of the said party of the first part, extending from Forty-second street, in the city of New York, to Chatham Four Corners, * * * together with all the lands on which the said railroad, * * * is constructed, or which are connected with or necessary for its use, and all the rights, easements, franchises, and
253 privileges in connection therewith, or which are appurtenant thereto; * * * and all other the real estate and chattels real of the said party of the first part, situate, lying and being north of Forty-second street, in the city of New York, * * * whether used for railroad purposes or not. * * * subject, however, to the provisions of a certain *contract* with The New York and New Haven Railroad Company, * * *.

* * * * * * *

To have and to hold the said demised railroad, * * * premises, equipments and appliances, rights, privileges and franchises unto the said party of the second part, its successors and assigns, for and during the full term and period

of four hundred and one years from the first day of April, one thousand eight hundred and seventy-three.

* * * * * * *

Sixteenth. * * * the said party of the second part, its successors or assigns, may, at any time during the continuance of the demised term, change and alter the line, way and gauge of the said demised railroad, or branch, and, in so doing may discontinue any part of the present way or track of said railroad or branch, and any of the machine shops or depots not required for the use of the line, and *may also change the grade or grades of the road, and alter or change the location of any of the tracks,* water stations,
buildings or erections appurtenant thereto, or con-
254 nected therewith, and may also, if it shall deem it necessary, *purchase* and acquire title to any additional real estate for the use of said road, or may exchange its lands or buildings for other lands more convenient or necessary for its use, and of equal value for the uses and purposes of the said road; *but all such alterations, changes, purchases or exchanges are to be made at the proper cost and charge of the said party of the second part;* and the said party of the second part, its successors and assigns, may also, from time to time, during the continuance of the said term, *sell* and dispose of such part of the demised premises and property as may not be necessary for the use of the said demised railroad * * *. (Italics ours.)

Respondent alleges that on May 7, 1903, the Legislature of New York passed an act known as Chapter 425, Laws of 1903, and that the following provisions of said act (contained in carrier's Exhibit 88 in the record before the Commission) are pertinent to the issues herein:

Section 1. * * * the New York and Harlem * * *, and its lessee the New York Central * * * are and each of them is hereby authorized and directed to depress all of the existing tracks of the New York and Harlem * * * between Fifty-seventh street and Forty-second street, and Madison avenue and Lexington avenue, in the city of New York * * *.

255 §4. * * * after the expiration of five years * * * it shall not be lawful * * * for any

railroad corporation to operate trains by steam locomotives in Park avenue in the city of New York south of the Harlem river * * *. And the New York and Harlem * * * and its lessee, the New York Central * * *, so long as it remains such lessee, and the New York, New Haven and Hartford * * *, so long as it has any *contract or other rights to operate its trains* in Park avenue south of the Harlem river, and such other railroad companies as may hereafter obtain *permission therefor,* are hereby authorized to run their trains by electricity * * * through the tunnel, * * * and over the route of the said railroad and in and upon the depot at Forty-second street, * * * and the approaches thereto, * * *. (Italics ours.)

§5. The New York and Harlem and its lessee the New York Central * * * are, and either of them is, hereby authorized and empowered to acquire from the city of New York, and the city of New York, * * * is hereby authorized and empowered, * * * to grant to said railroad corporations, or to either of them, any and all lands, or rights, interests or easements in lands in anywise owned, occupied or controlled by the city of New York, * * * which may be necessary or required for the purpose of making any alterations, * * * in * * * the
256 yards and structures forming the terminals of the New York and Harlem * * * and the approaches thereto * * *.

Respondent alleges that the "tripartite agreement" executed on July 24, 1907, was entered into by the parties to supersede the "tripartite lease" of November 1, 1872, referred to by the carrier, and that it was executed prior to the construction of the present Grand Central Terminal and provided for the changes necessary to be made in the terminal area and the approaches thereto under the laws of 1903, including the depressing of tracks and the elimination of steam operation. This substitute "tripartite agreement" is the contract governing the carrier's rights to the use of Grand Central Terminal extending from Forty-second street to Fifty-ninth street in New York City, the Mott Haven coach yard and the power system appurtenant to electrical operation and contains the following especially pertinent provisions not quoted by the carrier:

2. The Central Company covenants and agrees, *at its own expense, to procure* or furnish *all land* and interests in

land and all rights in any ways on which the said land may abut not now owned by it or by the Harlem Company and required for the said Railroad Terminal, *and to construct the said* Railroad Terminal * * *

* * * * * * *

257 4. The New Haven Company covenants and agrees with the Central Company to *pay to the Central Company* * * * as compensation * * * a proportion annually of * * * interest * * * on actual net expenditures (specifying the various expenditures of the Central for the present terminal) * * * a proportion: * * * (h) Of all net cost of maintenance, repairs and renewals of the Railroad Terminal; (i) Of all net expenditures for the operation of the Railroad Terminal; * * * (production based upon the extent of use).

* * * * * * *

6. * * * these presents are upon the express condition, that if the New Haven Company shall at any time during the term of this lease *make default in the performance of any of the covenants and agreements herein contained to or with the Central Company,* and continue therein for a period of sixty days after notice * * *, these presents and the term hereby granted shall, as to the New Haven Company, cease and become void *at the option of the Central Company;* * * *

* * * * * * *

23. All the rights and obligations of the parties hereto granted, created, assumed or imposed in and by said Tripartite Lease, dated the first day of November, 1872, and the said four agreements supplemental thereto,
258 * * * *shall be terminated on the day on which this agreement takes effect.* (Italics ours.)

The respondent expressly denies the correctness of the conclusions and inferences drawn by the carrier from the facts alleged in the petition, and expressly denies that the carrier's rights are property interests owned and used by it for its purposes as a common carrier within the meaning of Section 19a of the act, or required to be valued thereunder; or that the Commission admits their value should have been

ascertained and reported; or that the evidence showed the carrier has a perpetual easement in the railroad of the New York & Harlem from Woodlawn Junction to Forty-third Street and an undivided interest in the Grand Central Station under a perpetual lease and an undivided interest in the property of the Boston Terminal Company under the charter of that Company; or that the rights granted by the contract of January 22, 1846, were in perpetuity or that the agreement of July 24, 1907, was entered into "upon the construction of the present Grand Central Terminal."

Further answering paragraph VII of the petition, the respondent particularly denies that under the statutes, agreements, and contracts referred to by the carrier, it has an estate in perpetuity, the legal equivalent of an estate in fee simple, or that it has any estate or perpetual
259 franchise in any of the property in question, but on the contrary alleges that the carrier has a mere right of use of the said properties upon the payment of rental based upon the extent of the carrier's use of such facilities, the extent of which said use varies from day to day; that the carrier has made no investment in the lands and structures so used; that the law of the State of New York governs the determination of the nature of the carrier's contractual rights of use, and that said contractual rights of use constitute a mere license and are not an estate in property; that said rights are of indeterminate duration and are not perpetual, as alleged by the carrier; that under the law of New York the carrier's contracts give it only a license to use the property of the New York and Harlem and New York Central Railroad Company, and that as such licensee it is, under said law, estopped to deny or dispute its licensor's title to any of the said New York terminal property; that in each of and all the carrier's sworn annual reports to the respondent, carrier has reported its use of the New York and Harlem's property as "line operated under trackage rights"; and that trackage rights are described in these annual reports as those in which "the respondent has no proprietary rights; only the rights of a licensee."

Respondent further alleges that the New York Central Railroad Company has an estate in the New York and Har-

lem Railroad Company's property by virtue of the
260 lease of all the steam-railroad property of the New York and Harlem for the term of 401 years from April 1, 1873; that under said lease, the New York Central operates the railroad property of the New York and Harlem and possesses for the term of the said lease, the benefits and privileges of possession and control of the terminal property, and likewise possesses and enjoys all the benefits and privileges of the New York and Harlem's ownership interest therein, and stands in the place and stead of the New York and Harlem in respect of the receiving of the rents for the carrier's enjoyment of its trackage rights; that the New York Central purchased several large tracts of land pursuant to the agreement of July 24, 1907, and that it erected upon these lands, at its own expense, the additional tracks, structures, and buildings constituting the present Grand Central building; that the original double track of the New York and Harlem has been enlarged to a four-track main line all the way from Woodlawn to the Grand Central Terminal and that all grade crossings have been eliminated at the expense of the New York Central. Respondent also alleges that the carrier contributed no part of the purchase money for these additional lands nor of the money expended in the placing or erecting of the common-carrier structures thereon; that there is no agreement by the carrier to perpetually use its trackage rights
261 over the tracks of the New York and Harlem and the carrier may cease to use these facilities at any time without further obligation on its part. Respondent further alleges that the carrier has no proprietary interest in the Boston Terminal Company's property; that the Boston Terminal Company owns and operates the said property and that the carrier enjoys solely a right of use thereof for which it pays a rental chargeable to operating expenses.

And further answering said paragraph VII, the respondent alleges that in its report, Exhibit I, consideration was given to the ascertainment of "other values, and elements of value, if any, of the property" and that such as were found to exist were given consideration by the respondent in its finding of the final single sum values for rate-making purposes therein determined and reported to Congress pursuant to Section 19a of the act.

Further answering the said paragraph, respondent respectfully shows to the Court that the allegations of this paragraph of the petition and the answer hereinabove made raise issues in respect of the ownership of property in the States of New York and Massachusetts, which issues are not proper to be tried in a proceeding by mandamus, and that accordingly, the said petition should be dismissed.

8. Answering paragraph VIII of the petition, respondent admits the Interstate Commerce Act provided
262 the carrier with no remedy by appeal or writ of error to review the final valuation made under section 19a prior to its use in evidence in some controversy arising under the act, and that on December 9, 1929, it proposed and published a *tentative* plan for the consolidation of the railroad properties of the country into a limited number of systems; and further answering said paragraph respondent denies each and every material allegation thereof not herein expressly admitted to be true.

Further answering said paragraph, respondent specifically denies that any of the carrier's owned or used physical property has been excluded from the respondent's final valuation, or that the carrier will suffer great or any injury by reason of said final valuation of the Commission, and further specifically denies that the relators are without adequate remedy for the correction of any errors in the said final valuation; and alleges that as and when the final valuation is introduced in evidence in any specific controversy under the Interstate Commerce Act the carrier will have adequate remedies for the correction of any errors which may be found to exist therein. Respondent further alleges that the absence of an immediate remedy by appeal or writ of error furnishes no ground for the issuance of a writ of mandamus.

9. Further answering the petition herein, the respondent alleges that all the physical property over which the carrier herein is shown to have a trackage right has
263 been inventoried and included once in the valuation of the New York Central or the Boston Terminal Company by reason of the ownership or dominion by way of lease of the said companies therein; that in arriving at the valuation of the said properties all elements of value have received due consideration; that the carrier's enjoyment of the use of such physical property is dependent

upon the payment of rental for such use, which payments become a part of the carrier's operating expenses paid for in rates by the users of transportation; that to include in the valuation of the carrier's property a portion of the value of the property owned or held by the said other companies for the use of which such rental is paid would result in duplication of values which would require users of transportation to pay a second time in rates for the property so used.

Respondent respectfully shows to the Court that the principal issues presented to the respondent by the carrier and now here presented to the Court are:

1. Did the carrier by the grant of trackage rights and the payment of rent, acquire any joint ownership in the jointly used terminal property?

2. Under the Valuation Act, is the respondent required to report a specific value for the carrier's trackage rights?

Respondent respectfully shows the Court that its report, Exhibit 1 attached to the petition, and the allegations of its answer hereinabove made, show that it fully considered these issues on the merits and fully determined them adversely to the carrier's contentions, and that the writ sought herein is not appropriate to review and reverse the respondent's decision upon these issues.

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10. Further answering the petition, respondent alleges that the petition does not contain statements or allegations of fact which entitle the carrier to the relief, or any of the relief, prayed for in and by said petition, and does not state a cause of action over which this court has jurisdiction, for the following reasons, to wit:

A. The petition shows that respondent has not refused or neglected to assume or exercise jurisdiction over the matters, or any of the matters, referred to in, and covered by, the petition, but has fully exercised its jurisdiction and fully decided said matters committed to it for decision.

B. The petition shows that the carrier seeks herein to compel a particular exercise of judgment and discretion on the part of the respondent and to compel respondent

to act in a particular way which is not the function of a writ of mandamus.

C. The petition seeks the determination of a question of title to property between the carrier and third parties not parties to this proceeding, and such controversy can not be determined in an action for mandamus.

D. The petition shows that the carrier is not seeking to have the respondent take jurisdiction and "investigate, ascertain, and report" the value of the physical property mentioned in the petition, but, on the contrary, that the carrier seeks the apportionment or allocation to the carrier of a proportionate part of the respondent's value found and reported to Congress as a result of its investigation of the value of other railroad properties under the act.

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E. The petition shows that the carrier seeks by mandamus to have relief against "imminent danger of use of the final valuation to the prejudice of the carrier's interests" which is not a proper function for the writ of mandamus.

F. The petition shows that the relators are attempting to use the peremptory writ of this court to correct alleged error in the final valuation and to use said writ to serve the office of an appeal, writ of error, or certiorari which is not the function of such writ.

G. The petition shows that the carrier is attempting to have this court set aside, annul, and suspend the final valuation report made by the respondent in a valuation proceeding before it under and in accordance with the provisions of Section 19a of the Interstate Commerce Act; that in said proceeding respondent accorded to each of and all of the relators the full hearing provided for by paragraph (i) of said section; that in said proceeding testimony and evidence bearing upon the matters covered by the valuation report were submitted to be considered and discussed by respondent in said report; that all matters covered by the petition herein were fully considered by the respondent and by the exercise of its judgment and discretion, determined adversely to said relators in its said report, issued under and in accordance with the authority conferred upon the respondent by Congress in said Section 19a.

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H. The petition does not show that the respondent has been guilty of any act or omission, which act, if done, or

which omission if made, would entitle the carrier to the relief, or any of the relief, prayed by it in and by said petition.

11. Further answering the petition, the respondent denies the truth of each and all of the material allegations contained in said petition in so far as said allegations conflict either with the respondent's allegations herein made, or with any of the respondent's findings and statements contained in its final valuation of the property of the relators, attached to the petition as Exhibit 1, or with any of the statements of its rules, regulations, and methods contained in the extracts from the Texas Midland valuation report attached to and made a part of the petition as Exhibit 2, which said Exhibits 1 and 2 are herein referred to and made a part hereof; and further alleges that many allegations of the petition are carrier's conclusions of law and are argumentative and do not call for respondent's answer by affirmation or denial.

267 Wherefore the Interstate Commerce Commission, respondent herein, prays that the petition be dismissed, that the rule to show cause heretofore issued herein be discharged, and that it may go hence without day and recover of the relators its costs herein expended.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM,
General Solicitor.
THOMAS M. ROSS,
Assistant General Solicitor.
ROBERT E. FREER,
Senior Attorney.
MARY B. LINKINS,
Junior Attorney.

UNITED STATES OF AMERICA,
District of Columbia:

Personally appeared before me Ernest I. Lewis, who, being duly sworn, made oath that he is a member of the Interstate Commerce Commission, respondent herein, that he has read the foregoing answer, and that the statements of fact therein contained are true to the best of his knowledge and belief.

(Signed) ERNEST I. LEWIS.

Sworn to before me and subscribed in my presence this 21st day of Nov., 1930.

(Signed) G. P. WERNER,
[SEAL.] *Notary Public.*

268 *Reply of Relators to Answer of Respondent.*

Filed December 9, 1930.

* * * * * * *

The New York, New Haven & Hartford Railroad Company, et al., relators in the above-entitled cause, (hereinafter referred to collectively as the Carrier) now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies contained in the answer of the respondent (hereinafter referred to as the Commission) replying thereto, or to so much and/or such parts thereof as it is advised is material or necessary for it to reply unto, says:

1. Replying to paragraph 1 of the answer the Carrier denies that third parties not parties to this proceeding have rights vitally affected by any determination of the issues raised herein and alleges that said allegation contained in said paragraph is insufficient in fact and law in that the third parties referred to are not named nor their rights defined. The Carrier understands the allegation that mandamus should not be issued to be a conclusion of law which does not call for reply by affirmation or denial.

2. Replying to paragraph 2 of the answer the Carrier denies that jurisdiction to determine the issues raised herein is committed to the Commission by Congress and denies the Commission has fully exercised its jurisdiction or fully decided the issues before it. The Carrier alleges that the Commission was not authorized to exercise any judgment or discretion as to whether any part of the property owned by the Carrier should be valued, but was under a statutory duty to ascertain and report the value of all the property owned by the Carrier including its property rights in the New York and Boston terminals and approaches.

269 The Carrier is not attempting to use mandamus to serve the office of appeal, writ of error or certiorari, but to compel the Commission to perform its said statutory

duty in that respect. All other allegations in said paragraph except to the extent that they admit allegations of the petition are hereby denied.

3. Replying to paragraph 3 of the answer the Carrier alleges that its title to the New York and Boston terminals and approaches was in issue before the Commission and that nowhere in its report, Exhibit 1, to which the Commission refers in its answer for a statement of its conclusions in respect thereof, did the Commission decide adversely to the claim of the Carrier that it had an estate in said property and that its rights to operate trains into and out of said terminals are absolute and perpetual. The Carrier further alleges, on the contrary, that according to the conclusions of the Commission as set forth in said report it refused to place a value on what it admitted to be valuable rights of the Carrier, not because those rights were not an estate in property, not because those rights were not absolute and perpetual, but because in violation of its statutory duty it insisted on making a valuation "for rate-making purposes" and excluded for that purpose all rights of this character, whether constituting an estate in property or not. The Carrier denies that the petition and answer place in issue before this Court the title to property, denies that said paragraph correctly states the conclusions of the Commission in respect thereof as set forth in said report and denies all other allegations in said paragraph except to the extent that they admit allegations in the petition.

4. Replying to paragraph 4 of the answer the Carrier admits that the Commission necessarily had to interpret the statute, but alleges that in so far as the interpreta-
270 tion thereof involved its duty thereunder it was bound to interpret its duty correctly and was not vested with any judgment or discretion in that respect; that the question of whether the valuation should be "for rate-making purposes" and whether for that purpose rights of the character claimed by the Carrier were entitled to valuation required an interpretation of the statute involving the duty of the Commission thereunder; and that this question as to whether they should be valued at all, as distinguished from the question of what their value was, was not left by Congress to the judgment or discretion of the Commission, but required a correct interpretation of its

duty under the statute for which mandamus is the proper remedy. The Carrier denies that the Commission's interpretation of the statute was correct, denies that the Commission has fully performed its duty thereunder and denies all other allegations in said paragraph except to the extent that they admit allegations of the petition.

5. Replying to paragraph 5 of the answer the Carrier for reasons hereinbefore stated denies that the Commission decided the contention of the Carrier as set forth in paragraph 5 of the petition adversely to the Carrier and alleges, on the contrary, that the report, Exhibit 1, expressly states that the Commission found it unnecessary to decide said contention in making a valuation "for rate-making purposes." The Carrier admits for the purpose of this cause that the Commission has valued all the physical property mentioned in the petition; that the entire New York terminal property was inventoried in detail and valued by the Commission in its final report on the value of the railroad property of the New York Central Railroad system; that the Carrier's joint use is therein set out; that the entire physical property of The Boston Terminal Company was inventoried in detail and likewise valued by the Com-
271 mission in its final report on the value of that company's property; that the Carrier's joint use of this property was referred to in said report on The Boston Terminal Company's value, but denies that the Commission has inventoried or valued the rights of the Carrier therein or all intangible elements of value inhering therein. The Carrier admits that it is a joint user of these terminal properties, but denies that such use is by virtue of mere "trackage rights" in the sense in which that expression is used in the answer and alleges that its rights constitute an estate in said physical property and that whether an estate therein or not they were entitled to valuation for any purpose under the act including "rate-making purposes." The Carrier admits that the Commission had to interpret the phrase "property owned or used," but denies that the interpretation which in said paragraph the Commission places on that phrase is correct and denies that the Commission is vested with any judgment or discretion in respect of the interpretation thereof. The Carrier admits, if material, that the interpretation of that phrase and of the statute in general as set forth in said paragraph has

been followed in certain of the commission's own decisions, but denies that such interpretation is in accordance with any rules or regulations of the Commission, whether having the force and effect of law or otherwise, and denies that the Commission is authorized to promulgate rules and regulations interpreting its duty to "ascertain and report the value of all the property owned or used by every common carrier" in a manner inconsistent with the correct legal interpretation thereof. The Carrier denies that the allegations of the petition and answer show that it seeks to have this Court annul, set aside or suspend a final valuation made by the respondent in accordance with the pro-
272 visions of Section 19a of the act, alleges that in the respects set forth in the petition the final valuation in question is not in accordance with those provisions and that any rules and regulations of the Commission and its published reports inconsistent with a correct legal interpretation of those provisions are immaterial to the issues raised herein and constitute no authority in support of the Commission's position. So far as not herein expressly admitted the Carrier denies all allegations in said paragraph except to the extent that they admit allegations in the petition.

Further replying to said paragraph the Carrier alleges that if the position taken by the Commission that its duty was confined to ascertaining and reporting the value only of the physical or corporeal property irrespective of the various estates, interests and other incorporeal rights therein, which in law constitute property to the same extent as physical or corporeal property, be correct then the recapture provisions under Section 15a which limit the net railway operating income of a carrier to a fair return on the aggregate value of all its property held and used in the service of transportation would deprive a carrier of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States by denying it a fair return on its incorporeal property.

6. Replying to paragraph 6 of the answer the Carrier admits that the rent which it pays in respect of its rights in the New York and Boston terminals and approaches is charged to "joint facility rents" in determining its "net railway operating income" under Subdivision 1 of Section 15a, but only because the Commission in the exercise of its authority under Subdivision 5 of Section 20 to prescribe

"the forms of all accounts to be kept by the carriers" has defined "joint facility rents" to include "amounts payable accrued as rent for tracks, yards, terminals and
273 other facilities owned *or controlled* by other carriers * * * and in the joint use of which the carrier participates." The Carrier does not admit the correctness of this definition of "joint facility rents" or that the rents in question should be deducted in determining "net railway operating income." The Carrier, however, denies that there would be any duplication by reason of such deduction if the value of said terminals and approaches were properly apportioned as between the several carriers having interests therein. The Carrier denies that the Commission had authority to exercise any judgment or discretion in respect of the issues herein raised and insofar as not herein expressly admitted denies all other allegations in said paragraph except to the extent that they admit allegations of the petition.

7. Replying to paragraph 7 of the answer the Carrier admits the correctness of the quotations made by the Commission from the statutes and agreements therein referred to and that the entire statutes, agreements and contracts are material and necessary to a true interpretation of its rights, but alleges that in certain respects additional material quotations therefrom should be set forth herein.

Paragraph 4 of the "Tripartite Agreement" of July 24, 1907 also contained a provision not quoted by the Commission that after the term of said lease dated April 1, 1873, the payments should be made "to the Harlem Company, its successors and assigns," and that paragraph 26 thereof provided as follows:

"Nothing herein contained shall impair any of the rights of either of the parties hereto, under the agreement between the New York and Harlem Railroad Company and the New York and New Haven Railroad Company, dated March 17, 1848, as modified by arbitration, under date of June 27, 1856, and by arbitration under date of Jan-
274 uary 19, 1861, copy of which is hereto annexed."

The Carrier further alleges that its rights in the tracks from Woodlawn to 43d Street were recognized as a property interest in the mortgage of the New York and Harlem

Railroad Company dated June 1, 1897 securing its 3½% Gold Bonds providing that Guaranty Trust Company as mortgagee should hold the premises

"subject, however, to the rights of The New York, New Haven and Hartford Railroad Company in respect of any of the said property, *under a certain agreement bearing date March* 17, 1848, and a tripartite agreement bearing date November 1, 1872; and also to the rights of the New York Central and Hudson River Railroad Company in respect of any of the said property under the said tri-partite agreement bearing date November 1, 1872 and under the lease above mentioned bearing date April 1, 1873." (Underscoring ours.)

The Carrier denies that it has a mere right of use of the New York and Boston terminals and approaches; that it has made no investments in the lands and structures so used; that its rights of use constitute a mere license either under the laws of New York or otherwise, but alleges that its rights are in perpetuity and constitute a base or determinable fee, an estate in property. The Carrier admits that in certain of its sworn annual reports to the Commission it has reported its use of the New York and Harlem property as "line operated under trackage rights" and that trackage rights are described in said reports as those in which "the respondent has no proprietary rights, only the rights of a licensee," but alleges that they were so reported because the Commission in the exercise of its authority under Subdivision 1 of Section 20 "to prescribe the manner in which such (annual) reports shall be made" provided in its form of report no other classification under which as therein defined the Carrier's rights
275 could properly be reported.

The Carrier admits, if material, that the New York Central Railroad Company is in possession of all the steam railroad property of the New York and Harlem Railroad Company under the lease of April 1, 1873 for the term of 401 years, that the New York Central purchased several tracts of land pursuant to the agreement of July 24, 1907 and erected upon these lands certain tracks, structures and buildings constituting the present Grand Central building, and that the original double track of the New

York and Harlem has been enlarged to a four-track main line from Woodlawn to the Grand Central Terminal, but except as in this sentence specifically admitted the Carrier denies the allegations in said paragraph relating to the rights of the New York Central Railroad Company and the construction of the Grand Central Terminal and alleges that they are not material to the issues raised herein and in no way qualify or affect the nature and extent of the Carrier's rights in the New York terminal and approaches. The Carrier denies, if material, that it is under no obligation by agreement or otherwise to exercise its rights in the tracks of the New York and Harlem and may cease to use these facilities at any time without further obligation on its part, but says that those allegations in said paragraph are immaterial to the issues raised herein and likewise in no way qualify or affect the nature or extent of the Carrier's rights in said tracks. The Carrier admits that The Boston Terminal Company owns and operates the South Station in Boston and that the Carrier enjoys a right of use thereof for which it pays as rental its proportion of the maintenance thereof, but alleges that its rights are absolute and perpetual and constitute an estate
276 therein and that the rental is charged to joint facility rents by reason of the Commission's own requirements to which reference has hereinbefore been made.

So far as not herein expressly admitted the Carrier denies all allegations in said paragraph except to the extent that they admit allegations of the petition.

8. Replying to paragraph 8 of the answer the Carrier understands it to contain exclusively denials and conclusions of law, which latter do not call for reply by affirmation or denial.

9. Replying to paragraph 9 of the answer the respondent admits, but only for the purposes of this cause, that all the physical property over which it has rights has been inventoried and included once in the valuation of the New York Central or The Boston Terminal Company but denies that in arriving at the valuation of said properties all elements of value have received due consideration. The Carrier admits that its enjoyment of the use of such physical property is dependent upon the payment of rental, but for the reasons already set forth it alleges that said payments become part of the Carrier's operating expenses solely be-

cause of the Commission's own definition of joint facility rents in its accounting rules, but denies that as a result thereof any duplication of values would ensue if the value of the Carrier's rights in the New York and Boston terminals and approaches was properly determined. The Carrier denies the correctness of the Commission's statement in said paragraph of what it describes as the principal issues presented to the Commission by the Carrier and further denies that the Commission fully considered the issues which were presented and which are raised herein. So far as not herein expressly admitted the
277 Carrier denies all allegations in said paragraph except to the extent that they admit allegations of the petition.

10. Replying to paragraphs 10 and 11 of the answer the Carrier understands them to contain exclusively denials and conclusions of law, which latter do not call for reply by affirmation or denial.

Wherefore relators deny and join issue on each and every material allegation in said answer of the respondent, not herein and hereby expressly admitted, confessed and avoided, or controverted by the record as made in said cause, entitled New York, New Haven & Hartford Railroad Company, et al., Valuation Docket No. 311, and prays, as in the first instance, for a writ of mandamus, directed to said respondent, Interstate Commerce Commission, commanding it forthwith to perform its ministerial duty in accordance with the provisions of the Interstate Commerce Act, as alleged in the petition.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY AND OTHER RELATORS,
By CHOATE, HALL & STEWART,
Attorneys.

JOHN L. HALL,
CHOATE, HALL & STEWART,
P. M. COOK,
Attorneys for the Relators.

STATE OF CONNECTICUT,
County of New Haven:

New Haven, December 6, 1930.

Personally appeared E. G. Buckland and J. J. Pelley being respectively the Chairman of the Board of Directors

and the President of The New York, New Haven and Hartford Railroad Company and each of them made oath
278 that he has read the foregoing replication and that the statements of fact therein contained are true to the best of his knowledge and belief.

Before me.

MAURICE K. DUGAN, [SEAL.]
Notary Public.

Rejoinder of Respondent to Replication of Relator.

Filed December 13, 1930.

* * * * * * *

Comes now Interstate Commerce Commission, the respondent in the above-entitled action, and saving and reserving to itself the benefit of all exceptions set forth in the answer and by way of rejoinder to the relator's replication herein entered, says:

1. That it denies each and every material averment of every paragraph of the said reply not hereinafter specifically admitted, and joins issue thereon.

2. In respect to the allegation in paragraph 3 that "its title to the New York and Boston terminals and approaches was in issue before the Commission," it is admitted that such matter was an issue to the extent that it was necessary for the Commission to consider the character of the relator's rights therein for the purpose of determining their proper treatment for valuation purposes under Section 19a of the Act; and it expressly denies that it has failed to fully decide and determine such issue.

3. That it specifically denies the allegations of paragraph 5 that the rights of the relator are more or other than "trackage or terminal rights," and denies that
279 it has failed in its statutory duty to "ascertain and report the value of all the property owned or used by every common carrier," for the reason that, as shown in its report, relator's trackage and terminal rights are not such property as is required to be valued under the said Valuation Act.

4. That replying to paragraph 7 of the said reply, it admits, if they be material, the accuracy of the quotations therein set out from the agreement and mortgage, but

respondent denies the materiality of said quotations and denies that the same show recognition of any other right in respondent than trackage or terminal rights, and denies that the respondent is required to value such rights under the Valuation Act.

Further replying to said paragraph 7 respondent alleges that if the quotation from paragraph 4 of the agreement of 1907 be material, the language next preceding the words quoted is also material to the issues herein, and that this portion of the said paragraph when thus completed provides that the New Haven Company shall pay its rental

* * * to the Central Company during the term of said lease dated April 1, 1873, *and any renewals thereof,* and thereafter to the Harlem Company, its successors and assigns. * * * (Underscoring ours.)

Further replying to that portion of said paragraph 7 respecting the definition by relator of its rights, the respondent denies that the relator has described its rights in the property in issue as "trackage rights" because the respondent's forms provided no other classification therefor, but alleges on the contrary that the relator also reported its use of the property in issue as "Road operated under Trackage Rights" in its printed reports to stockholders.

Wherefore the respondent joins issue upon the
280 relator's replication and denies each and every material allegation therein contained, except such as are herein expressly admitted and renews its prayer that the petition be dismissed, that the rule to show cause heretofore issued be discharged, and that the respondent recover its costs.

INTERSTATE COMMERCE
COMMISSION,
By CHARLES W. NEEDHAM,
General Solicitor.
THOMAS M. ROSS,
Assistant General Solicitor.
ROBERT E. FREER,
Senior Attorney.
MARY B. LINKINS,
Junior Attorney.

UNITED STATES OF AMERICA,
District of Columbia:

Personally appeared before me Ernest I. Lewis, who, being duly sworn, made oath that he is a member of the Interstate Commerce Commission, respondent herein, that he has read the foregoing rejoinder, and that the statements of fact therein contained are true to the best of his knowledge and belief.

ERNEST I. LEWIS.

Sworn to before me and subscribed in my presence this 13th day of December, 1930.

[NOTARIAL SEAL.] G. P. WERNER,
Notary Public.

281 *Stipulation.*

Filed February 12, 1931.

* * * * * * *

Counsel for all parties in the above entitled cause hereby stipulate and agree that such typewritten or photostatic copies of statutes, leases, contracts and agreements as are initialed by counsel for all parties are true and correct copies of the statutes, leases, contracts, agreements duly offered and/or read in evidence before the Interstate Commerce Commission in Valuation Docket 311, The New York, New Haven & Hartford Railroad Company et al., and without further proof or authentication said typewritten or photostatic copies so initialed may be offered in evidence by either patty, subject, however, to any objection that may be made to their materiality or admissibility other than as above stated; that any party may cite in argument and brief the laws or law of the States of New York, Connecticut and/or Massachusetts by citing the volume and the page of the statutes, constitutions and decisions of said states without formal proof of such law or laws as matters of fact.

It is further agreed that copies of all or any parts of any annual reports of any of the relators to the Interstate Commerce Commission or to their stockholders, initialed by counsel for all parties are true and correct copies of

the same, and without further proof of their authenticity, may be offered in evidence by either party, subject, however, to any objection that may be made to their materiality or admissibility other than as above stated.

Nothing herein contained shall preclude any party from making any objection to the relevancy, materiality, competency, or admissibility of any evidence offered be-
282 fore the court save and except only objections to the authenticity of the documents so initialed or the proving of the law or laws of New York, Connecticut and/or Massachusetts as matters of fact.

P. M. COOK,
Counsel for Relators.
R. E. FREER,
Counsel for Respondent.

Memorandum Opinion.

Filed April 2, 1931.

* * * * * * *

In valuing the property of the relator, the New York, New Haven and Hartford Railroad Company, pursuant to the provisions of Section 19a of the Interstate Commerce Act (United States Code, Title 49, Sec. 19a), the Interstate Commerce Commission refused to find and include the value of that Company's "rights" in the terminal facilities which it enjoys in the Grand Central Station and its approaches in the City of New York, and in the South Station and its approaches in the City of Boston. Claiming that such refusal disregards a duty made mandatory by the statute, the New Haven Company, acting for itself and the other relators, its subsidiaries and lessors, asks this Court, by mandamus, to require the Commission to perform that duty.

The New Haven Company operates an interstate system of railroads in Massachusetts, Rhode Island, Connecticut and New York. Its tracks enter the State of New York from Connecticut at or near Port Chester, and at Woodlawn connect with the tracks of the Harlem Railroad, now operated under lease by the New York Central and Hudson River Railroad. From Woodlawn, in a southerly direction

to and into the Grand Central Station, a distance
283 of about twelve miles, the New Haven trains operate over the New York Central tracks and the two Companies use the station in common, all pursuant to contracts between them.

The Commission valued all the physical property south of the junction point, including the station, as belonging to the New York Central, treating the New Haven's rights as merely contractual rights for trackage and terminal facilities, the valuation of which was not within the contemplation of the statute.

The New York Terminal.

The New York and New Haven Railroad Company, a predecessor of the relator, was incorporated in Connecticut in 1844 to construct a railroad from New Haven, Connecticut, to the New York State Line. The New York and Harlem Railroad Company, incorporated in New York in 1831, had by 1844 constructed and opened for operation a railroad from White Plains, in the State of New York, into New York City.

By Chapter 195 of the Laws of 1846, the Legislature of New York authorized the New York and New Haven to extend its road from the Connecticut State Line and connect with the road of the New York and Harlem at or near Williams Bridge, the present connection, and the Legislature of Connecticut, in the same year, "assented to" and "confirmed" that Act, and authorized the New York and New Haven to accept the "grant therein made" and to exercise and enjoy the "rights, powers and privileges conferred thereby."

On March 17, 1848, the two Companies entered into a contract by which the New York and Harlem Company granted to the New York and New Haven the right

284 "to run their trains, engines and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlem Railroad Company from the point of junction aforesaid to and into the City of New York."

Under this agreement, the New Haven Company was to furnish its own haulage and pay the New York and Har-

lem Company as full compensation "for the use and occupation of their track or tracks as aforesaid" a certain sum for each passenger transported, and the Harlem Company was to keep its road from the junction point to the termination in repair. The agreement was to continue in force during the terms of their charters respectively and for all renewals thereof, but contained a provision for readjustment of compensation every five years by agreement or, in the event of failure to agree, by arbitration.

By Chapter 143 of the Laws of 1848, the New York Legislature authorized the New Haven Company to enter upon and run its cars and engines over the road of the Harlem Company from the point of junction into the City of New York, upon such terms and to such point "as has been or may hereafter be agreed upon by and between said Companies."

Pursuant to these statutes and this agreement, the New Haven Company built and connected its tracks with those of the Harlem, and ever since has operated its trains over them into the City of New York.

In April, 1872, the New York Central Railroad Company, which had theretofore entered New York City on the Hudson River side of Manhattan Island, connected its road with the Harlem road, about five miles north of 42nd Street, and arranged with the Harlem for the joint use of its tracks from that point into the City of New
285 York.

On November 1, 1872, the Central, the Harlem and the New Haven Companies entered into an agreement called "Tripartite Lease" under which the Harlem was to construct the original Grand Central Depot at 42nd Street and lease to the Central and the New Haven the use of this station jointly with itself.

On April 1, 1873, the Harlem road leased all of its steam railroad property to the New York Central for a term of 401 years. This lease was made, however, subject to the provisions of the contract between the Harlem and New Haven Companies, which was specifically assigned to the New York Central, together with the Harlem's ownership, interest and rights under the tripartite agreement of 1872. This lease has been in full force and effect down to the present time.

By Chapter 425 of the Laws of 1903, the New York Legislature required the Harlem and the Central, within

five years thereafter, to make changes in the approaches to the Grand Central Terminal, including the depressing of the tracks, and made it unlawful after the expiration of that time to operate trains by steam locomotives in Park Avenue in the City of New York south of the Harlem River.

By agreement dated July 24, 1907, between the Harlem, the Central and the New Haven, provision was made for the construction of the present Grand Central Station, and the Central, acting for itself and the Harlem Company, leased to the New Haven, during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which should operate the present railroad of the New Haven Company,

"the use, in common with the Central Company, subject to all the provisions of this agreement, of the
286 said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic,"

with the proviso that the New Haven Company's right to the use of the terminal should in no event exceed 50% of its maximum capacity; and as compensation the New Haven was to pay a proportion of the interest on the cost of construction and of the annual expenses for maintenance and operation.

Pursuant to the Act of 1907 and these agreements, the present Grand Central Station and the approaches thereto were constructed.

The New Haven contributed no part of the cost of these improvements. The original double-track of the Harlem has also been enlarged to a four-track main line from Woodlawn to the Terminal, and all grade crossings eliminated, at the expense of the New York Central.

South Station in Boston.

By Act of June 9, 1896, the Massachusetts Legislature incorporated the Boston Terminal Company for the purpose of constructing and maintaining a union passenger station in the City of Boston, and to provide adequate terminal facilities for several railroad companies entering the city. These companies were the Boston and Albany,

the New England, the Boston and Providence, the Old Colony, and the New York, New Haven and Hartford, which latter Company was the lessee of the Old Colony. Each of these companies was authorized to subscribe for 20% of the capital stock of the Terminal Company, which was fixed at $500,000. The management of the station and its approaches was to be vested in a board of five trustees, one to be appointed by each of the railroad com-
287 panies from its board of directors. The Terminal Company was authorized to raise money by the issuance of bonds secured by mortgages or pledges of its property. In case of foreclosure of any mortgage, the railroad companies were to be liable for any resulting deficiency in such proportions as might be just and equitable, having regard to the use which they or their lessees might have in the property, and jurisdiction to determine the proportions was conferred upon the Supreme Judicial Court of Massachusetts.

By Section 9 of the Act, it was provided that the said railroad companies should, upon its completion, use the station and the approaches for all their terminal passenger business in Boston, instead of the terminals then used by them.

Other provisions of the Act required the railroad companies to pay to the Terminal Company, in proportion to the use made, such amounts as should be necessary to pay the expenses of the Terminal Company's corporate administration and the maintenance and operation of the station and the facilities connected therewith, including insurance, repairs, taxes and assessments, interest upon its bonds, and a dividend not to exceed 4% per annum upon its capital stock. The proportion of use by the several companies was to be fixed by agreement between them or, in case of failure to agree, by the Massachusetts Board of Railway Commissioners, and payments made by the companies should be deemed "a part of their operating expenses."

By Section 25 of the Act, it was provided that the Terminal Company should pay a franchise tax to the Commonwealth of Massachusetts upon the true market value of its capital stock, but its real estate required by the Act to be used by the railroad companies should be assessed
288 to, and the taxes thereon paid by, the railroad companies; and in the assessment of franchise taxes upon

the railroad companies, each of them should be deemed to be the owner of the real estate in the proportion in which it should then have use thereof under the Act.

Pursuant to this statute, the Boston Terminal Company was incorporated, each of the five companies subscribed to its capital stock, and the terminal known as the South Station and its approaches were constructed.

The New Haven having acquired the property of the New England Company and leased the property of the Boston and Providence and Old Colony Companies, is now owner of 80% of the capital stock of the Terminal Company, and the New York Central Railroad Company as lessee of the Boston and Albany owns the balance.

The Commission placed a value of $20,770,500 upon the property of the Boston Terminal Company, and declined to place a separate value upon the New Haven's right to use the terminal.

The relator's claims respecting its rights in the New York and Boston Terminals is concisely stated in its petition as follows:

"Under the leases and agreements referred to above the Carrier has an estate in perpetuity, the legal equivalent of an estate in fee-simple, in the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street and in the Grand Central Terminal. Its right to use the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street is a perpetual franchise by virtue of the authorizing and confirmatory acts of the Legislatures of the States of New York and Connecticut. Its right to use the property of The Boston Terminal Company is a perpetual franchise by virtue of the charter of that corporation from the State of Massachusetts."

289 The applicable portions of Section 19a of the Interstate Commerce Act are as follows:

"Sec. 19a. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. * * * The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act

in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

"(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same."

The questions now presented are not new. When the Commission entered upon the stupendous task of valuing all the railroads in the country, certain problems at once arose, prominent among them being the proper way to apply the Act when a road was owned by one carrier and operated by another; when roads were owned and operated jointly by two or more carriers; or when one carrier had, by contract, rights permitting it to operate its trains on sections of track owned by another, commonly called "trackage rights." These questions were presented in the first valuation case, decided July 31, 1918. *The Texas*
290 *Midland Railroad,* 75 I. C. C. 1.

In that report and an appendix thereto, the Commission, after most careful consideration of the statute, its scope and purposes, laid down a set of principles for its guidance in the performance of the duty imposed by the statute. The Commission said:

"In addition to the use of property owned, many common carriers have made arrangements by contracts for the use of property for common-carrier purposes which is owned by others. * * * Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common-carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The extent and terms of the use appear also in the inventory of the using carrier or carriers.

"It has been our endeavor to adopt a method with respect to this class of property which will permit of reporting the three cost values for all property used for common-carrier purposes without duplication. When it is borne in mind that many railroads are not operated exclusively by their owners, but that certain portions thereof are used by one or more carriers by virtue of trackage rights, etc., it is apparent that d*pu*lication of values for such jointly used property will result unless a proper course of procedure is pursued. The necessity of securing reproduction new and reproduction less depreciation values without duplication is manifest, since these values must necessarily be considered as factors entering into the determination of an ultimate value of railroad property" (75 I. C. C. 20, 21).

With respect to valuation of the "right to use," it said:

"In addition to its claim that the three cost values of the property used but not owned should be included in its inventory, the carrier asserts that it is our duty to report separately a figure as the value of the right to use. It is a sufficient answer to this contention to state it is now universally accepted that it is the fair value of the property used by the public service corporation in serving the public which is to govern in fixing rates. *San Diego Land Co.* v. *National City,* 174 U. S., 739. This being true, the value of that property can not be increased or diminished by contracts or other arrangements between the carriers themselves. In the absence of an improper payment as rental the public is not concerned with the acts of carriers between themselves. The law requires the ascertain-
291 ment of values for property owned or used, but

not the value of the use.

"The attempt to fix the value of use would be speculative, because of the absence of any sound basis upon which to proceed, and if obtained would result in the inflation of the property values of the carriers upon which the public may be required to pay a fair return. Indeed, such a finding by us would have the effect of inviting the carriers to make arrangements between themselves with the view of increasing the value of their property" (75 I. C. C. 23-24).

The Commission has steadfastly followed these principles in each of the more than 1000 valuations which have since been found and reported.

Without repeating the arguments, it is sufficient to say that, in my opinion, this interpretation of the Act was reasonable, justified by the practical difficulties inherent in the situation, and consistent with the purposes of the statute; indeed that any other would lead to unjust and unreasonable results. See Physical Valuation of Railroad Property, Senate Library Vol. 36, No. 4; Physical Valuation of Property of Common Carriers, Senate Library Vol. 15, No. 6; Valuation of the Several Classes of property of Common Carriers, Senate Report No. 1290, 62nd Cong. 3d Sess.

Counsel for the relator apparently realize the force of the Commission's reasoning. For they seek to differentiate their case by contending that the relator has something more than a mere right to use the property in question, that its rights constitute an actual estate in the property itself, to be carved out of the fee simple estate, that in truth it is an owner using its own property, not the user of another's property. To quote its contention, it has an estate "the legal equivalent of an estate in fee simple in the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street and
292 in the Grand Central Terminal." If it were an ordinary case of lessor and lessee, of landlord and tenant, there would be force in the contention, but it must be remembered that we are now dealing with a peculiar kind of property devoted to a special use.

The applicable principle seems to me to be that stated in *Union Pacific R'y Co.* v. *Chicago, Rock Island & Pacific*

R'y Co., 163 U. S. 564. That case arose out of a contract between the Union Pacific and the Rock Island Companies, by which the Union Pacific let the Rock Island Company

"Into the full, equal and joint possession and use of its main and passing tracks, now located and established, or which may be hereafter located and established,"

between certain points. Within a comparatively short time, the Union Pacific Company attempted to repudiate the contract as *ultra Vires*, one of its claims being that by the contract it had disabled itself from performing the duties imposed upon it by its charter, since the instrument was a lease and railroad leases had been denounced as *ultra vires* in *Thomas* v. *Railroad Company*, 101 U. S. 71; *Pennsylvania Railroad Co.* v. *St. Louis, Alton &c. Railroad*, 118 U. S. 290, and other cases.

The Rock Island Company brought an action against the Union Pacific for specific performance. The case was tried in the Circuit Court by Mr. Justice Brewer, who decided in favor of the Rock Island Company, upholding the contract, 47 Fed. 15. His decision was affirmed in the Circuit Court of Appeals, 10 U. S. App. 98, and by the Supreme Court of the United States, 163 U. S. 564. The decision of the case depended upon the nature of the contract and of the rights granted by it. In considering the nature of the contract,

293 Mr. Chief Justice Fuller, delivering the opinion of the Court, after referring to the fact that in several places the instrument is called a "lease" and the parties are called "lessor" and "lessee," and pointing out that what it was styled by the parties did not determine its character, but that the Court was required to examine the entire contract, the relations of the parties, their connection with the subject matter, the circumstances under which it was signed, said at page 582:

"The contract provided that the Pacific Company hereby 'lets the Rock Island Company into the full, equal and joint possession and use of its main and passing tracks.' The possession here spoken of was such possession as the Rock Island Company would have when its engines, cars and trains were running over the tracks. The company had no possession before its trains came on the tracks or after they had run off of them, and while its trains were on the

tracks its possession was only of the particular part occupied temporarily while running over them. Moreover, all trains were to be moved under the direction of an officer of the Pacific Company. The Rock Island trains coming upon a Pacific track immediately passed from the control of the Rock Island Company into that of the Pacific, and its officials were subjected to the orders of the Pacific's officers. And throughout the whole contract there does not appear to be a single provision which looks to any actual possession by the Rock Island of any of the Pacific property beyond that which was involved in its trains being run over the tracks under the direction of the other company. The contract in this regard was really an agreement for trackage rights, for running arrangements, a 'terminal contract' with compensation on a 'mileage' or 'wheelage basis,' rather than a lease."

And at page 589:

" * * * By the contract the Pacific Company parted with no franchise, and was not excluded from any part of its property or the full enjoyment of it. What it agreed to do was to let the Rock Island into such use of the bridge and tracks as it did not need for its own purposes. This did not alien any property or right necessary to the discharge of its public obligations and duties, but simply widened the extent of the use of its property for the same purposes for which that property was acquired, to its own profit so far as that use was concerned, and in the furtherance of the demands of a wise public policy."

Mr. Justice Brewer in his opinion in the Circuit
294 Court, 47 Fed. 15, 23, said of the contract:

" * * * While the Rock Island is let into possession and use, the Pacific is not put out of possession and use. There is no surrender of the exclusive use of any portion of the Pacific's line. It remains in the undisturbed possession of every mile of its track; can operate all its trains, and discharge all the duties which it owes to the government or the public. A different question would arise if it had attempted by this instrument to dispose of the full possession of the same length of its track."

The same reasoning applied to the present case leads, I believe, to the conclusion that the New Haven's rights in the tracks of the Harlem are no different in kind from those which the Rock Island had in the tracks of the Union Pacific Company. The language in the one is no broader than that in the other. The purposes, uses and objects were identical, and, as pointed out, by the Supreme Court, 163 U. S. 584, such contracts are frequently made between railroad companies. See also *Brooklyn Crosstown R. R. Co.* v. *City R. R. Co.*, 51 Hun. 600; *Coney Island R. R. Co.* v. *Brooklyn Cable Co.*, 53 Hun. 169.

The claim is also made that by reason of the statutes which have been referred to, the New Haven now operates by virtue of a franchise from the State of New York. It is urged that the Act of March 29, 1848, took the form of an amendment to the charter of the New York and Harlem, raising the easement granted by the latter company to the status of a franchise. This claim can hardly be sustained. That Act did not purport to amend the Act under which the New York and Harlem was organized, namely, Chapter 263 of the Laws of 1831, entitled, "An Act to incorporate the New York and Harlaem Rail-Road Company." The Act of 1848, as I look at it, was merely permissive, its obvious purpose being to forestall any claim that the contract between the two companies was *ultra vires*. It is also
295 urged that a "striking confirmation" of the intention of the Legislature to grant to the New York and New Haven a franchise over the tracks from Woodlawn to 43rd Street is found in the Act of May 7, 1903, providing for the substitution of electricity for steam as a mode of operation. I find no such striking confirmation. Indeed, I draw a conclusion entirely different. The Act is entitled "An Act to provide for further regulation of the terminals and approaches thereto of the New York and Harlem railroad * * * and of the public highway structures over said terminals and approaches and of the motive power to be used on said railroad."

Section 1 of the Act authorizes and directs "the New York and Harlem Railroad Company, and its lessee the New York Central and Hudson River Railroad company." to depress all of the existing tracks of the "New York and Harlem Railroad company" between certain streets, and the "said railroad corporations", still referring to the Har-

lem and Central, were authorized to make other changes.

Section 2 begins "In order to enable the said railroad corporations to depress their tracks as hereinbefore provided, and to permit the operation of trains otherwise than by steam locomotives" the City of New York was authorized to grant certain rights to the "said railroad corporations."

Under Section 3, the New York Central and Hudson River Railroad Company is directed to prepare plans and profiles, etc. The work of constructing the viaducts or bridges in accordance with the plans and profiles "shall be done and performed by the New York Central and Hudson River Railroad company" and "the city of New York shall bear and pay to the New York Central and Hudson River Railroad company" for a portion of the work
296 directed.

Section 4 provides that from and after the expiration of five years after the approval and filing of the plans and profiles provided for in section three and the doing of certain other enumerated things, it should be unlawful "for any railroad corporation to operate trains by steam locomotives" etc. Toward the end of that Section, the name of the New York, New Haven and Hartford Railroad Company appears for the first time in this way:

"And the New York and Harlem Railroad company and its lessee, the New York Central and Hudson River Railroad company, so long as it remains such lessee, and the New York, New Haven and Hartford Railroad company, so long as it has any contract or other rights to operate its trains in Park avenue south of the Harlem river, and such other railroad companies as may hereafter obtain permission therefor, are hereby authorized to run their trains by electricity."

This is the only place in the Act where the New Haven Company is mentioned by name. Throughout the entire Act, the companies which are authorized or directed to do the various things necessary to carry out the purpose of the statute are the New York Central and the Harlem.

Careful reading of Section 8, which contains the words deemed so striking by relator's counsel, shows plainly that

it is intended to apply only to the New York Central and Harlem Companies. It begins:

"Nothing in this act contained shall have the effect of limiting or impairing in any manner or to any extent the existing rights, privileges or franchises of the railroad corporations, or either of them, now using the said tunnel, * * * except in so far only as such rights, privileges or franchises shall be expressly limited or modified by this act * * *; and the said railroad corporations, or either of them, are hereby authorized and empowered to acquire by purchase or by condemnation * * * all property * * * which may be necessary * * * in order to carry out and into effect the provisions of this act."

297 The only companies required to do anything under the Act were the New York Central and the Harlem, and they were the companies which were authorized to acquire the property necessary to carry out the obligations imposed upon them by the preceding sections of the statute. There is nothing whatever in the statute which, in the remotest degree, tends to show that the New York Legislature regarded the New Haven road as other than an operator of trackage under rights given by contract with the New York Central; or that it looked to the New Haven to do anything whatever toward carrying out the scheme contemplated by the statute. The only thing which it was required to do was to desist from operating its trains by steam, and the only thing which it was authorized to do was to operate them thereafter by electricity, as long as it should have any right to operate at all.

What has been said with respect to the trackage rights applies equally well to the rights in the station itself. The agreement of July 24, 1907, recites that the trains of the New Haven Company enter the City of New York upon the tracks of the Harlem Company, under the contract of March 17, 1848, and that the Central Company and the New Haven Company, now use the Grand Central Depot, under the provisions of the agreement of November 1, 1872, as modified by subsequent agreements. The Central Company agrees, at its own expense, to procure or furnish all the land, interests and rights for the Railroad Terminal and leases the New Haven Company "the use, in common with the Central Company" of the said Railroad Terminal.

It is a "terminal contract" not essentially different from those frequently made between railroad companies.

My conclusion is confirmed to some extent by the
298 fact that in each of its annual reports to the Interstate Commerce Commission, required by law since 1888, the New Haven has reported its use of the property here in dispute under the caption—"Class (5)," "Line operated under *trackage rights.*" The printed instructions of the report explain this as follows:

"Class (5) includes all tracks operated and maintained by others but over which the respondent has the right to operate some or all of its trains. In the road of this class the respondent has no proprietary rights but only the rights of a licensee."

If the New Haven Company had believed throughout these years that it was a joint owner of this property, it could and should have scheduled its joint operation under Class (1). The Commission's instructions are specific to this effect.

The work of valuation has now been going on for seventeen years and over one thousand reports have been made, each of which has followed the principles of the *Texas Midland.* Numerous attacks upon those principles have been made in the courts and have failed: *Delaware & Hudson Co.* v. *United States,* 295 Fed. 558. Affirmed 266 U. S. 438. *United States ex rel. Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission,* 6 Fed. (2nd) 692. Certiorari denied, 269 U. S. 570. *Los Angeles R. R. Co.* v. *United States,* 8 Fed. (2nd) 747. Reversed, *United States* v. *Los Angeles R. R. Co.* 273 U. S. 299. *Kansas City Southern Rwy. Co.* v. *United States,* 19 Fed. (2nd) 591. Reversed, 275 U. S. 500.

In one case the attack was successful, *Kansas City Southern Rwy. Co.* v. *Interstate Commerce Commission,* 252 U. S. 178. That case was decided March 8, 1920, and the next Congress amended the section so as to avoid the
299 result of the decision, Act of June 7, 1922, c. 210, 42 Stat. 624.

During all this time, the subject has been one of widespread interest and discussion. The Interstate Commerce Act was extensively amended by the Transportation Act of

February 28, 1920, c. 91, 41 Stat. 456, including unimportant amendments to Section 19a. Yet the section has not been changed in any way to indicate Congressional disapproval of the principles upon which the Commission has consistently proceeded. While the inference of approval by Congress from its mere failure to act may at best rest upon a weak foundation, *Springer* v. *Philippine Islands*, 277 U. S. 189, 209, it does not seem unreasonable to infer that in the present case the Commission's view of its duties under the statute has been in accord with the views of Congress, particularly so when we find Congress acting promptly in one instance when the highest Court disagreed with the Commission, and when we remember that the valuation of the railroad property was designed primarily as an aid to a function legislative in character, namely, rate-making.

My conclusion is that the Commission did not err in declining to value the rights of the relator in the New York Terminal and the approaches thereto. Even if it did, it is at least gravely doubtful whether this Court has the power by mandamus to require it to correct the error. Compare *United States ex rel. Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 6 Fed. (2nd) 692.

The Boston situation was not stressed in argument and does not seem to require special consideration. Counsel for the relator stated: "Our reason for bringing up the Boston Terminal is to take a consistent position with the New York Terminal." The value of the property is assigned
300 to the Boston Terminal Company and is reflected, of course, in the value of its stock. The New Haven owns 80% of that stock. Ownership of the stock carries with it the right to use the terminal. I do not see how the value of that right can be separated from the value of the stock and separately valued, and I do not think the statute requires the Commission to attempt to do so.

The rule to show cause will be discharged and the petition dismissed.

ALFRED A. WHEAT,
Chief Justice.

April 1, 1931.

Supreme Court of the District of Columbia.

Friday, April 3, 1931.

Session resumed pursuant to adjournment.
Hon. Chief Justice Alfred A. Wheat presiding.

* * * * * * *

This cause came on for hearing heretofore upon the petition filed herein, the rule to show cause issued thereon, the answer of the respondent and all other proceedings herein, and after argument by attorneys of record for the respective parties, was submitted to the Court and taken under advisement.

Whereupon, the same having been considered, it is adjudged and ordered that the said rule to show cause be, and the same is hereby discharged and the petition is dismissed.

Further, it is considered that the respondent recover of the petitioners the costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment the petitioners by
301 their attorneys of record, in open court, note an appeal to the Court of Appeals of this district. Whereupon, a maximum undertaking to act as a cost bond is hereby fixed in the sum of One Hundred Dollars ($100) with leave to deposit Fifty Dollars ($50) cash with the clerk in lieu thereof.

Memoranda.

April 15, 1931.—Time for filing Bill of Exceptions extended to and including May 13, 1931.

April 22, 1931.—$50 deposited in lieu of undertaking on appeal.

Relators' Assignment of Errors.

Filed May 6, 1931.

* * * * * * *

Now comes The New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, Boston & Providence Railroad Corporation (Massachusetts), Boston

& Providence Railroad Corporation (Rhode Island), Providence, Warren & Bristol Railroad Company, The Harlem River and Port Chester Railroad Company, Holyoke & Westfield Railroad Company, Providence & Worcester Railroad Company, Chatham Railroad Company, and Norwich & Worcester Railroad Company, Relators, appellants in the above entitled cause, by their attorneys, and assign as errors in the above entitled proceedings the following:

The Court erred:

1. In ordering that the rule to show cause be dis-
302 charged and the petition dismissed.

2. In ruling that the relators are not entitled to a writ of mandamus as prayed for in the petition.

3. In ruling that the respondent did not err in declining to value the rights of the relators in the New York Terminal and the approaches thereto.

4. In ruling that the Valuation Act did not require the respondent to value separately from the capital stock the rights of the relators in The Boston Terminal Company property.

5. In sustaining the respondent's objection to the admission in evidence of an agreed true copy of the transcript of the stenographer's notes of the testimony taken before the Interstate Commerce Commission in the Matter of the Valuation of the Property of The New York, New Haven & Hartford Railroad Company et al., Valuation Docket No. 311, certified by the secretary of the Commission. (Bill of Exceptions).

6. In overruling the relators' objection to the admission in evidence of agreed true copies of

(a) Page 27 of the sworn Annual Report to the Interstate Commerce Commission by The New York, New Haven & Hartford Railroad Company for the year ending June 30, 1888 (Bill of Exceptions, Exhibit 17);

(b) Pages 8 and 9 of the sworn Annual Report to the Interstate Commerce Commission by The New York, New Haven & Hartford Railroad Company for the year ending June 30, 1906 (Bill of Exceptions, Exhibit 18);

(c) Pages 12 and 13 of the sworn Annual Report to the Interstate Commerce Commission by The New York, New Haven & Hartford Railroad Company for the year ending June 30, 1914 (Bill of Exceptions, Exhibit 19);

(d) Pages 400, 400(a), 400(b) and 400(c) from
303 the sworn Annual Report to the Interstate Commerce Commission by The New York, New Haven & Hartford Railroad Company for the year ending December 31, 1929 (Bill of Exceptions, Exhibit 20).

7. In overruling the relators' objection to the admission in evidence of agreed true copies of

(a) The Annual Report of The New York, New Haven & Hartford Railroad Company to its stockholders, pages 34 to 41 inclusive, for the year ending June 30, 1906 (Bill of Exceptions, Exhibit 21);

(b) The Annual Report of The New York, New Haven & Hartford Railroad Company to its stockholders, pages 52 to 59 inclusive, for the year ending June 30, 1914 (Bill of Exceptions, Exhibit 22).

8. In other respects apparent of record.

JOHN L. HALL,
CHARLES O. PENGRA,
P. M. COOK,
Attorneys for the Relators.

Memorandum.

May 6, 1931.—Proposed Bill of Exceptions filed.

304 Supreme Court of the District of Columbia.

Thursday, May 21, 1931.

Sessions resumed pursuant to adjournments.

Hon. Chief Justice Alfred A. Wheat, Jennings Bailey, James M. Proctor, Joseph W. Cox, Justices, presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record. Whereupon, the Bill of Exceptions taken at the trial of this cause is submitted to the Court and is thereupon signed this 21st day of May, 1931, and made of record nunc pro tunc.

WHEAT,
Chief Justice.

Designation of the Record.

Filed May 6, 1931.

* * * * * * *

Now come The New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, Boston & Providence Railroad Corporation (Massachusetts), Boston & Providence Railroad Corporation (Rhode Island), Providence, Warren & Bristol Railroad Company, The Harlem River and Port Chester Railroad Company, Holyoke & Westfield Railroad Company, Providence & Worcester Railroad Company, Chatham Railroad Company and Norwich & Worcester Railroad Company, Relators, appellants in the above entitled cause, by their attorneys, and designate the parts of the record which they desire to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Petition for writ of mandamus with exhibits
305 and rule to show cause.

2. Respondent's answer.

3. Relators' reply.

4. Respondent's rejoinder.

5. Stipulation between counsel relative to admission in evidence of certain documents.

6. Memorandum by Hon. Chief Justice Wheat filed April 1, 1931.

7. Judgment discharging rule to show cause and dismissing petition.

8. Memorandum of relators' appeal in open court and fixing of undertaking on appeal.

9. Memorandum of filing of undertaking.

10. Relators' assignment of errors.

11. Memorandum of submission, signing and filing of relators' bill of exceptions.

12. Relators' bill of exceptions.

13. Relators' exhibits Nos. 1 to 16 inclusive and respondent's exhibits Nos. 17 to 22 inclusive as offered and received in evidence at the trial of the above entitled cause before Hon. Chief Justice Wheat on February 12, 1931.

Together with a copy of this designation.

JOHN L. HALL,
CHARLES O. PENGRA,
P. M. COOK,
Attorneys for Appellants, The New York, New Haven & Hartford Railroad Company et al., Relators.

Service of copy of the foregoing designation of the record is acknowledged this 6th day of May, 1931.

THOMAS M. ROSS,
Attorney for the Respondent.

306 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 305, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 78291 at Law, wherein United States of America, at the Relation of The New York, New Haven and Hartford Railroad Company, et al., are Relators and Interstate Commerce Commission is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 5th day of August, 1931.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk,

By CHAS. B. COFLIN,
Assistant Clerk.

307 At Law.

No. 78291.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA at the Relation of THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, Relators,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

Notice.

To Charles W. Needham, Esq., Thomas N. Ross, Esq., and Robert E. Freer, Esq., attorneys for the respondent:

Please take notice that the within bill of exceptions will be called to the attention of and submitted to the court on June 2nd, 1931, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, for the purpose of having the same signed and sealed by the court.

P. M. COOK,
Attorney for the Relator.

Service of the foregoing notice and copy of said bill of exceptions acknowledged this 6th day of May, 1931.

THOMAS M. ROSS,
Attorney for the Respondent.

308 In the Supreme Court of the District of Columbia.

At Law.

No. 78291.

UNITED STATES OF AMERICA at the Relation of THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, Relators,

v.

INTERSTATE COMMERCE COMMISSION, Respondent.

Bill of Exceptions.

Be it remembered that at the trial of this cause on February 12, 1931 before Honorable Alfred A. Wheat, Chief Justice, without a jury, proceedings were had as follows:

John L. Hall and Charles O. Pengra, Esqs., of Boston, Massachusetts, by leave of court, and P. Michael Cook, Esq., of Washington, D. C., appeared on behalf of the relators. Thomas M. Ross and R. E. Freer, Esqs., and Miss Mary B. Linkins, all of Washington, D. C., appeared on behalf of the respondent. The evidence, other than documentary evidence, consisted solely of testimony of **Edward G. Buckland**, called as a witness on behalf of the relators who, having been first duly sworn, was examined and testified as follows:

Direct examination:

Witness is chairman of the board of directors of The New York, New Haven and Hartford Railroad Company, having been an officer of that company since August 1, 1898

and its attorney some ten years prior to that. He has been familiar with the operations and management of the company during that entire time, having become vice-president on January 1, 1907, in charge of law and in the summer of 1913 in charge of finances and intercorporate relations, having been president during the twenty-six months of federal control, resuming his position as vice-president in charge of law, finance and intercorporate relations after the war and having been subsequently elected president in which capacity he continued until becoming chairman of the board on January 1, 1929. He was chairman of the committee of three vice-presidents of The New York, New Haven and Hartford Railroad Company appointed to represent it in negotiations with a committee of three vice-presidents of the New York Central and Hudson River Railroad Company for a new agreement covering the new Grand Central Terminal which was then in process of construction, the negotiations resulting in the agreement of July 24, 1907 hereinafter referred to (Testimony, pp. 10-13).

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The New York, New Haven & Hartford Railroad Company, its own and leased lines extends from Boston to New York via the so-called Shore Line running from Boston through Providence, westerly to New London, New Haven, Bridgeport, South Norwalk, Stamford and to New York. It also has an important line running from New Haven north through Hartford to Springfield to connect with the Boston & Albany Railroad. It also runs by a line known as the New York and New England line from Boston through Franklin, Putnam, Willimantic, Hartford, Waterbury and Danbury to a connection at Hopewell Junction with the Poughkeepsie Bridge route which gives connections to the various railroads that meet that route at Maybrook on the west side of the Hudson River. It also has various branch lines. The main terminals are Boston on the East and New York on the West. Both express and local trains are operated between those two points in very large numbers, the passenger traffic between those two points being the densest in the United States. Witness had previously testified in the valuation proceedings before the Interstate Commerce Commission in reference to the title and all the interest of the relators in the twelve miles of track from Woodlawn into the

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Grand Central Terminal and also in the Grand Central Terminal itself (Testimony, pp. 13, 14).

The New York and Harlem Railroad Company was incorporated by act of the Legislature of New York on April 25, 1831 with authority to construct and operate a railroad on Manhattan Island.

(The act was offered and received in evidence marked "Relators' Exhibit No. 1, Witness Buckland" and is made part hereof.) (Testimony, p. 14.)

By subsequent acts the New York and Harlem Railroad Company was authorized to extend its railroad to Chatham, New York, and between 1831 and 1844 it constructed and opened for operation a line of railroad from White Plains, a point north of Williams Bridge, into New York City (Testimony, p. 15). The New York and New Haven Railroad Company, the predecessor of The New York, New Haven & Hartford Railroad Company, was incorporated by act of the Legislature of Connecticut on June 7, 1844.

(The act was offered and received in evidence marked "Relators' Exhibit No. 2, Witness Buckland" and is made part hereof.) (Testimony, p. 15.)

The New York and New Haven Railroad Company applied to the Legislature of New York for authority to extend its railroad from the state line into New York City but the authority was not granted. On January 10, 1846 interests representing the New York and New Haven Railroad Company and the New York and Harlem Railroad Company entered into a memorandum providing that both parties were to use their best efforts to obtain legislation authorizing the New Haven to extend its railroad from the state line to connect with the Harlem's railroad at or near Williams Bridge and run its engines and cars over the Harlem's track into New York City.

311 (The memorandum was offered and received in evidence marked "Relators' Exhibit No. 3, Witness Buckland" and is made part hereof.) (Testimony, p. 17.)

The provisions of the memorandum were embodied in an agreement dated January 22, 1846, between those two railroad companies with the additional privilege to the New Haven of using certain land at 42d Street for its engine and car house.

(The agreement was offered and received in evidence marked "Relators' Exhibit No. 4, Witness Buckland" and is made part hereof.) (Testimony, p. 18.)

On May 11, 1846 the Legislature of New York authorized the New York and New Haven Railroad Company to continue and extend its railroad from the dividing line of the states of New York and Connecticut to the line of the New York and Harlem Railroad Company and to unite or connect with the latter at or near Williams Bridge.

(The act was offered and received in evidence marked "Relators' Exhibit No. 5, Witness Buckland" and is made part hereof.) (Testimony, p. 19.)

Under that act the New Haven built tracks from the Connecticut line to Williams Bridge and the agreement of January 22, 1846 was the agreement that it made with the Harlem at or about that time (Testimony, p. 19). In 1846 the Legislature of Connecticut authorized the New York and New Haven Railroad Company to accept and enjoy the rights so granted by the Legislature of New York.

(The act was offered and received in evidence marked "Relators' Exhibit No. 6, Witness Buckland" and is made part hereof.) (Testimony, p. 20.)

A plan subsequently marked "Relators' Exhibit No. 15, Witness Buckland" was offered and received in evidence and is made part hereof. Counsel for the respondent stated that they had no objection to it as a diagram but did not admit the correctness of certain notations upon it. The plan shows in heavy black lines the railroad of The New York, New Haven & Hartford Railroad Company extending westerly from Byram River, the boundary line
312 between Connecticut and New York, to a junction with the New York and Harlem Railroad Company at Woodlawn. It shows in a broken black line the line of the Harlem coming in a southerly direction over to the same junction point. It shows in a broken yellow line the route from Woodlawn Junction down to 42d Street, New York City, over which The New York, New Haven & Hartford Railroad Company acquired its title by virtue of the documentary evidence shown in the agreement of March 17, 1848 (Testimony, p. 27).

P. M. Cook.
R. E. Freer.

At a meeting of the board of directors of the New York and New Haven Railroad Company held on February 15, 1848, the following transpired:

"The President presented a record with opinion of counsel in writing in reference to the contract between this company and the New York and Harlem Railroad Company for the connection of the two roads, stating that he had been informally informed by some of the officers of that company that they did not intend to fulfill that contract. Said report was read and ordered to be placed on file, whereupon, on motion, it was resolved that the President be requested to address the President of the New York & Harlem Railroad Company requesting information officially in regard to the intention of said company as to the fulfillment of said contract.

"On motion it was resolved that the President be authorized in the name and in behalf and under the seal of this Company to present to the legislature of the State of New York a memorial stating so much of the history of the associations of the contracts heretofore made and had between said companies in regard to the connection of their roads as may be necessary to give full information in reference thereto and praying for such legislative sanction as to said contract and said other legislation in the premises as may be necessary to protect the rights of this company,"

as appears from the record of the meeting.

(The record of the meeting was offered and received in evidence marked "Relators' Exhibit No. 9, Witness Buckland" and is made part hereof.) (Testimony, p. 9.)

On March 17, 1848, the New York and Harlem Railroad Company and the New York and New Haven Railroad Company entered into an agreement to take the place of the agreement of January 22, 1846.

(The agreement of March 17, 1848, was offered and received in evidence marked "Relators' Exhibit No. 7, Witness Buckland" and is made part hereof.) (Testimony, p. 21.)

The following sections of the agreement were read in evidence:

313 "This Agreement and Contract of Transportation made and concluded this seventeenth day of March, in the Year One Thousand eight hundred and forty-eight between The New York and Harlem Railroad Company of the one part and The New York and New Haven Railroad Company of the other part. Witnesseth as follows:

"*First.* It is mutually understood and agreed that this agreement shall stand in the place and stead of a certain agreement heretofore made between the said parties bearing date the twenty-second day of January, eighteen hundred and forty-six.

"*Fourth.* It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction to Byram River, they shall have the right to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight &c. over the track or tracks of the road of the New York and Harlaem Railroad Company from the point of junction aforesaid to and into the city of New York, and as far over the same in the said City as the said Company's road shall extend, not however below the intersection of said Railroad and Pearl Street in said City,—the said New York and New Haven Company furnishing their own haulage.

"*Fifth.* It is mutually understood and agreed that in the arrangement of the trains of the two companies preference shall be given to the through trains of the New York and New Haven Railroad Company over the way and freight trains to be run by the New York and Harlaem Railroad Company, and in like manner a preference shall be given to the through trains of the New York and Harlaem Railroad Company over the way and freight trains of the New York and New Haven Railroad Company and upon this principle the mode of running the trains of the two companies shall be adjusted from time to time by the said companies or such officers as they may respectively appoint or designate to make such arrangements for running their several trains, so as to ensure the greatest speed accommodation and safety to passengers &c.

"*Sixth.* It is mutually understood and agreed that the New York and New Haven Railroad Company shall pay, in the manner hereinafter provided, and the New York and Harlaem Railroad Company shall receive as full compensa-

tion for the use and occupation of their track or tracks as aforesaid a certain sum for each passenger transported by the said New York and New Haven Railroad Company in their several trains, to be dependent upon and adjusted by the total number so transported daily according to the following scale:

"*Eleventh.* It is mutually understood and agreed that the New York and Harlem Railroad Company shall without delay proceed to grade and construct a second line of rails or track with heavy H rails from the termination of their present double track to the aforesaid point of junction, which second track is to be made in a manner to be approved by the chief engineers of both roads and to be completed and ready for use on or before the completion of the road of the New York and New Haven Railroad Company from said point of Junction to Byram River now supposed to be on or about the first of October next, but it is further understood and agreed that the New York and New Haven Railroad Company shall and will upon the request
314 of the New York and Harlem Railroad Company loan and advance to them the sum necessary for the construction of the said second track by instalments as the work advances, or upon the execution of contracts for the same with responsible parties satisfactory to the New York and New Haven Railroad Company, but this mode of payment shall be at their option, to be secured by the bonds of the said New York and Harlem Railroad Company payable five years after date bearing interest at the rate of seven per centum per annum payable half yearly secured by the mortgage of said second track and appurtenances.

"*Fourteenth.* It is mutually understood and agreed that this Agreement shall continue in force and be binding upon both companies during the term of their charters respectively and for all renewals thereof but either party may terminate the covenants for compensation numbers Six, Seven and Eight and Nine of this Agreement upon any day after the expiration of three years from the commencement of the use of the road of The New York and Harlem Railroad Company by the New York and New Haven Railroad Company of which not less than Twelve months notice shall have been given in writing to the other. But in that event it is mutually understood and agreed that the two companies shall and will forthwith on service of said notice

proceed to arrange the terms of new covenants for the above purposes and if they cannot agree upon the terms of said new covenants then the matters or points in disagreement shall be submitted to arbitrators in the usual mode whose award shall be binding upon the parties and be embodied in the said new covenants for the ensuing five years and at the end of each succeeding five years new covenants in regard to compensation shall be made in like manner upon like notice being given by either party."

On March 29, 1848 the Legislature of New York amended the charter of the New York and Harlem Railroad Company by authorizing the New York and New Haven Railroad Company to enter upon and run their cars and engines over the road of the former from the point of junction at or near Williams Bridge into New York City upon such terms as had been or might thereafter be agreed upon between the companies.

(The act was offered and received in evidence marked "Relators' Exhibit No. 8, Witness Buckland" and is made part hereof.) (Testimony, p. 27.)

The following language from the act was read in evidence:

"The New York and New Haven Railroad Company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business, over the road of the New York and Harlem railroad company, from the point of junction of the roads of said companies at or near William's Bridge, in the county of Westchester, to the City of New York, and as far into the said city as the said Harlem railroad may extend, upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a
315 copy of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this state; and to take, transport, and convey persons and property upon the said Harlem Railroad, by the power and force of steam or animals or any mechanical power or combination of the same."

The act provided that a copy of the agreement or agreements referred to therein was to be duly authenticated and

filed in the office of the secretary of state of New York and pursuant thereto the agreement of March 17, 1848, was duly authenticated and filed in that office (Testimony, p. 28).

On April 7, 1872, the New York Central and Hudson River Railroad Company, now known as the New York Central Railroad Company, which theretofore had entered New York City only on the Hudson River side of Manhattan Island connected the tracks of one of its leased lines with those of the Harlem at Mott Haven, 138th Street, and it was at that time and by that means that the Central obtained its present entrance to New York City by Park Avenue. Prior to that time the New York Central and Hudson River Railroad Company ran down the east bank of the Hudson River as shown on the plan, Exhibit No. 15 referred to above, by the heavy broken black line to Spuyten Duyvil and the light broken black line from Spuyten Duyvil south. The plan shows those lines stopping at 59th Street. As a matter of fact the lines went down and still go down to St. John Park at 29th Street, the terminal at that time being St. John Park at 29th Street and Tenth Avenue. In November, 1871, the Central had acquired the Spuyten Duyvil and Port Morris Railroad Company, which is represented by the heavy black line from Spuyten Duyvil down to the Mott Haven yards and also from the junction at Melrose with a terminus on the East River at Port Morris. As lessee the Central was able to obtain for the first time the connection with the New York and Harlem Railroad Company and it was by that means and at that time that the Central obtained its entrance into Manhattan Island over the route of the Harlem from what is commonly known as the Mott Haven Junction as far south as
316 those tracks extended which at that time was to 27th Street, but soon after they were moved up to 42d Street, the site of the old Grand Central Depot and the present Grand Central Terminal (Testimony, pp. 34, 35).

The New York and New Haven Railroad Company first operated its trains to Canal Street, New York City, at which point it established its terminal. Thereafter its line was shortened so that in 1857 its terminal was moved north to 27th Street (Testimony, p. 33).

On August 6, 1872, the New York and New Haven Railroad Company was consolidated with the Hartford and New Haven Railroad Company under its present name, The New

York, New Haven & Hartford Railroad Company, which succeeded to all the rights and obligations of the consolidating companies by authority of the Legislature of Connecticut (Testimony, p. 33).

On November 1, 1872, the New York and Harlem Railroad Company, the New York Central and Hudson River Railroad Company and The New York, New Haven & Hartford Railroad Company entered into a so-called tripartite lease providing for the construction by the Harlem of the original Grand Central Depot and its joint use and occupation by all three companies.

(The lease was offered and received in evidence marked "Relators' Exhibit No. 10, Witness Buckland" and is made part hereof.)

Pursuant to the lease the so-called Grand Central Depot, not the present Grand Central Terminal, was constructed (Testimony, p. 36).

By indenture dated April 1, 1873, the New York and Harlem Railroad Company leased its railroad to the New York Central and Hudson River Railroad Company for a term of 401 years.

(The lease was offered and received in evidence marked "Relators' Exhibit No. 11, Witness Buckland" and is made part hereof.) (Testimony, p. 36.)

Particular reference is made to the following paragraphs in the indenture:

"First. The said party of the first part hereby demises and leases unto the said party of the second part, its successors and assigns, the said railroad of the said party of the first part, extending from Forty-second Street, in the city of New York, to Chatham Four Corners, * * *
317 together with all the lands on which the said railroad, * * * is constructed, or which are connected with or necessary for its use, and all the rights, easements, franchises and privileges in connection therewith, or which are appurtenant thereto; * * * and all other the real estate and chattels real of the said party of the first part, situate, lying and being north of Forty-second street, in the city of New York, * * * whether used for railroad purposes or not. * * * subject, however, to the pro-

visions of a certain contract with The New York and New Haven Railroad Company, hereinafter mentioned, * * *.

* * * * * * *

"To have and to hold the said demised railroad, * * * premises, equipments and appliances, rights, privileges and franchises unto the said party of the second part, its successors and assigns, for and during the full term and period of four hundred and one years from the first day of April, one thousand eight hundred and seventy-three."

"Ninth. The said party of the first part having, under date of March 17, 1848, entered into an agreement and contract of transportation with The New York and New Haven Railroad Company, by which that company acquired, upon the conditions therein named, certain rights upon and to use the tracks and certain of the property and premises of the said party of the first part—which said contract, as modified, from time to time, under the provisions thereof has been succeeded to by the New York, New Haven and Hartford Railroad Company—it is covenanted and agreed by the said party of the first part that it will, and it does hereby specifically assign and transfer the said contract to the said party of the second part, with all the reservations, rents, revenues, uses, benefits and profits to be derived or received from or under it.

"But it is expressly covenanted and agreed by the said party of the first part, that so far as the provisions of the said contract grants to the said The New York and New Haven (now The New York, New Haven and Hartford) Railroad Company any rights upon or to use the track or appurtenances of the railroad of the said party of the first part operated by horse-power aforesaid, all covenants and agreements in relation thereto shall continue to be kept and performed as heretofore, by it the said party of the first part, as one of the general considerations of this contract.

"And the said party of the second part covenants and agrees that it will carry out, fulfill and perform each and every of the conditions in said contract with the said The New York and New Haven Railroad Company, imposed upon the said party of the first part, so far as they relate to or are connected with the railroad or property that is

hereby demised, or that are therein, in that respect, agreed by the said party of the first part to be kept, fulfilled or performed."

"Tenth. The said party of the first part having, under date of November 1st, 1872, entered into a lease (commonly called the 'Tripartite Lease') with The New York, New Haven and Hartford Railroad Company and The New York Central and Hudson River Railroad Company (the said party of the second part), leasing to the said companies respectively, certain parts of the depot of the said party of the first part, situate on Forty-second street and Fourth Avenue, in the city of New York, and commonly known as the 'Grand Central Depot', together with certain uses of grounds, tracks, buildings and appurtenances con-
318 nected with the said Depot and the other premises of the said party of the first part, as will by reference to the said lease more fully appear, the said party of the first part covenants and agrees that it will, and it does, hereby specifically, assign and transfer to the said party of the second part the said 'Tripartite Lease', and all the reservations, rents, revenues, uses, benefits and profits to be derived therefrom or thereunder.

"And the said party of the second part covenants and agrees that it will carry out, fulfill and perform each and every of the conditions and obligations therein imposed upon the said party of the first part, or by it agreed to be fulfilled and performed."

"Sixteenth. * * * the said party of the second part, its successors or assigns, may, at any time during the continuance of the demised term, change and alter the line, way and gauge of the said demised railroad, or branch, and, in so doing may discontinue any part of the present way or track of said railroad or branch, and any of the machine shops or depots not required for the use of the line, and may also change the grade or grades of the road, and alter or change the location of any of the tracks, water stations, buildings or erections appurtenant thereto, or connected therewith, and may also, if it shall deem it necessary, purchase and acquire title to any additional real estate for the use of said road, or may exchange its lands or buildings for other lands more convenient or necessary for its use, and of equal value for the uses and purposes of the said road; but all such alterations, changes, purchases or ex-

changes are to be made at the proper cost and charge of the said party of the second part; and the said party of the second part, its successors and assigns, may also, from time to time, during the continuance of the said term, sell and dispose of such part of the demised premises and property as may not be necessary for the use of the said demised railroad * * *."

On June 1, 1897, the New York and Harlem Railroad Company executed and delivered to Guaranty Trust Company of New York as trustee a mortgage securing an issue of bonds, paragraph 8 of the granting clauses of which provided (Testimony, p. 37):

"To have and to hold the premises, railroads, properties, real or personal, rights, franchises, estates and appurtenances, hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee, its successors and assigns forever;

Subject, However, to the rights of The New York, New Haven and Hartford Railroad Company in respect of any of said property, under a certain agreement bearing date March 17, 1848, and a tripartite agreement bearing date November 1, 1872; and also to the rights of The New York Central & Hudson River Railroad Company in respect of any of the said property under the said tripartite agreement bearing date November 1, 1872, and under lease above mentioned, bearing date April 1, 1873."

319 The trains of the New York and Harlem Railroad Company and the trains of The New York, New Haven & Hartford Railroad Company, and after the connection at Mott Haven Junction the trains of the New York Central and Hudson River Railroad Company from Mott Haven Junction, ran along an extension northerly of Fourth Avenue, which is known north of 33d Street as Park Avenue, down the length of that avenue, crossing Harlem River on the bridge on an elevated track until it enters the tunnel because of the hill at about 110th Street, thence through a tunnel below the level of Park Avenue the entire distance to its terminus in the Grand Central Terminal. As a result of rather serious collisions in the tunnel there was considerable agitation for the abolition of locomotives requiring combustion in their boilers upon

Manhattan Island. That resulted in the passage of an act of the New York Legislature of May 7, 1903.

(The act was offered and received in evidence marked "Relators' Exhibit No. 12, Witness Buckland" and is made part hereof.) (Testimony, p. 39.)

The following sections of the act were read in evidence:

"Section 1. * * * the New York and Harlem * * * and its lessee the New York Central * * * are and each of them is hereby authorized and directed to depress all of the existing tracks of the New York and Harlem * * * between Fifty-seventh Street and Forty-second street, and Madison avenue and Lexington avenue, in the city of New York * * *

"Section 4. * * * after the expiration of five years * * * it shall not be lawful * * * for any railroad corporation to operate trains by steam locomotives in Park Avenue in the city of New York south of the Harlem River * * *. And the New York and Harlem * * * and its lessee, the New York Central * * * so long as it remains such lessee, and the New York, New Haven and Hartford * * * so long as it has any contract or other rights to operate its trains in Park avenue south of the Harlem river, and such other railroad companies as may hereafter obtain permission therefor, are hereby authorized to run their trains by electricity * * * through the tunnel, * * * and over the route of the said railroad and in and upon the depot at Forty-second street, * * * and the approaches thereto, * * *

"Section 5. The New York and Harlem * * * and its lessee the New York Central * * * are, and either of them is, hereby authorized and empowered to acquire from the city of New York and the city of New York, * * * is hereby authorized and empowered, 320 * * * to grant to said railroad corporations, or to either of them, any and all lands, or rights, interests or easements in lands in anywise owned, occupied or controlled by the city of New York, * * * which may be necessary or required for the purpose of making any alterations, * * * in * * * the yards and structures forming the terminals of the New York and Harlem * * * and the approaches thereto * * *.

"Section 8. * * * nothing in the act shall limit or impair any of the existing rights, privileges or franchises of the railroad corporations, or either of them, now using the said tunnel, terminals and the approaches thereto, or of depriving in any manner or to any extent such railroad corporations, or either of them, of the use and benefit of such rights, privileges and franchises, except insofar only as such rights, privileges or franchises shall be expressly limited or modified by this act or in and by any instrument executed in pursuance hereof * * * and the said railroad corporations, or either of them, are hereby authorized and empowered to acquire by purchase or by condemnation, from any owner, and to take, hold, occupy and use for the purposes of its incorporation all real estate in fee, and all property * * * which may be necessary or reasonably required in order to carry out and into effect the provisions of this act."

Witness was chairman of the committee representing The New York, New Haven & Hartford Railroad Company in the negotiations leading to the agreement between the New York and Harlem Railroad Company, the New York Central and Hudson River Railroad Company and The New York, New Haven & Hartford Railroad Company dated July 24, 1907 (Testimony, p. 42). After the passage of the act of 1903 it was obviously necessary for the two railroad companies to make some other arrangements for operating their trains into New York City. The Central drew up plans which were not satisfactory with respect to the head house and the absence of the loops and ramps which now characterize the Grand Central Terminal and the New Haven committee declined to accept those plans as they were drawn. The Central claimed at that time the right to determine the method of entry and the character of the building and the two committees came to an impasse. The New Haven committee stated what they believed to be the case, that the rights of the Central were subordinate to the rights of the New Haven because the Central had made the connection and obtained its right nearly twenty-
321 five years subsequent to the rights which had been obtained in title by the New Haven and they further stated that they would not go on with the negotiations until the Central had assented to that proposition.

The New Haven Committee adjourned their meetings upon that basis. Afterwards that proposition was assented to and they proceeded. The New Haven committee changed the character of the Terminal arrangement of tracks by introducing an improvement consisting of the loops on the express level and on the suburban level whereby trains can be brought into the Terminal and turned around in the Terminal ready to go out again rather than go to the necessity of taking them out to the Mott Haven yard. The New Haven committee also introduced a ramp arrangement whereby the inclined plane is used rather than steps and made some other rather material changes in the arrangement of tracks and architecture of the station (Testimony, pp. 42-44).

(The agreement of July 24, 1907, was offered and received in evidence marked "Relators' Exhibit No. 13, Witness Buckland" and is made part hereof.) (Testimony, p. 41.)

Particular reference is made to the following paragraphs in the agreement:

"This agreement, made this 24th day of July, 1907, by and between The New York Central and Hudson River Railroad Company, hereinafter called the Central Company, The New York, New Haven and Hartford Railroad Company, hereinafter called the New Haven Company, and The New York and Harlem Railroad Company, hereinafter called the Harlem Company:

"Whereas, the trains of the New Haven Company enter the City of New York upon and over the tracks of the Harlem Company, under and pursuant to a certain contract, dated the 17th day of March, 1848, made by and between the Harlem Company and the New York and New Haven Railroad Company (the predecessor of the New Haven Company); and

"Whereas, the Central Company is the lessee of the entire steam railroad property of the Harlem Company, including the Grand Central Depot, in the City of New York, under a lease dated the first day of April, 1873, for a term
which will expire on the first day of April, 2274, sub-
322 ject to the provisions of said contract of March 17th, 1848; and

"Whereas, the Central Company (for itself and the Harlem Company) and the New Haven Company now

use the said Grand Central Depot, under the provisions of a certain agreement known as the 'Tripartite lease,' dated the first day of November, 1872, as modified by four agreements supplemental thereto, dated, respectively, the 31st day of December, 1885, the 14th day of July, 1897, the 17th day of August, 1898, and the 23rd day of March, 1899, all made by and between the parties hereto; and

"Whereas, in and by the said lease dated the first day of April, 1873, the Harlem Company duly assigned and transferred to the Central Company the said contract dated March 17, 1848, and the said 'Tripartite Lease' dated November 1, 1872; and

"Whereas, in order to provide facilities for the proper management and conduct of the business of the Central Company (for itself and as such assignee and lessee of the Harlem Company) and of the New Haven Company, and in order to carry out the provisions of Chapter 425 of the Laws of 1903 of the State of New York (copy of said act and of the act amendatory thereof being hereto annexed) it is necessary to make certain additions and changes in and about the Grand Central Depot, the yards and tracks connected therewith, and in and in respect to certain streets and avenues in the vicinity thereof;

"Now, therefore, this agreement witnesseth:

That the parties hereto, in consideration of the premises, and of the mutual covenants herein contained, have agreed, for themselves, their successors and assigns, with each other as follows:

* * * * * * *

"2. The Central Company covenants and agrees, at its own expense, to procure or furnish all land and interests in land and all rights in any ways on which the said land may abut not now owned by it or by the Harlem Company and required for the said Railroad Terminal, and to construct the said Railroad Terminal, as so described and illustrated, with all appurtenances connected therewith.

"3. The Central Company, acting for itself and the Harlem Company, as hereinafter authorized, in consideration of the rents hereinafter reserved to be paid by the New Haven Company, and in consideration of the covenants on the part of the New Haven Company hereinafter contained,

hath demised, let and leased, and by these presents doth demise, let and lease unto the New Haven Company during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven Company, the use, in common with the Central Company, subject to all the provisions of this agreement, of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight
323 traffic, provided, however, that the New Haven Company's right to the use thereof shall in no event exceed fifty (50) per centum of the maximum capacity of said Railroad Terminal, or of any part thereof.

"4. The New Haven Company covenants and agrees with the Central Company to pay to the Central Company during the term of said lease dated April 1, 1873, and any renewals thereof, and thereafter to the Harlem Company, its successors or assigns, as compensation for the premises hereby demised, as described in Section 1, a proportion annually of $485,393.69, being interest on the cost of that part of the present terminal constructed under the agreements dated November 1, 1872, and December 31, 1885, and in addition thereto a proportion of interest reckoned at the rate of four and one-quarter (4¼) per centum per annum on actual net expenditures specified in sub-division (3) of Schedule VII hereof and made or to be made, as follows:

* * * * * * *

"6. The New Haven Company hereby covenants and agrees with the Central Company not to assign this lease or any interest therein, or any interest in or to the use of the said Railroad Terminal hereby demised, or to underlet the same or any part thereof without the previous written consent of the Central Company, and also not to use or occupy any part of the demised premises or privileges or permit the same to be used or occupied for any purpose other than those for which the same are herein stated to be demised; provided always, and these presents are upon the express condition, that if the New Haven Company shall at any time during the term of this lease make default in the performance of any of the covenants and agreements herein contained to or with the Central Company, and continue therein for a period of sixty days after notice thereof or

demand in respect thereto in writing, then and in every such case, and although no advantage may have been taken of previous defaults, these presents and the term hereby granted shall, as to the New Haven Company, cease and become void at the option of the Central Company; and it shall be lawful for it to enter into and upon said premises and repossess itself thereof. The New Haven Company further covenants to and with the Central Company, that on the expiration or sooner determination of the term hereby granted, it will quietly leave, surrender and yield up the premises and privileges hereby demised to it, with the appurtenances, unto the Central Company.

The Central Company hereby covenants and agrees with the Harlem Company that all the provisions in respect to default contained in the said lease made by the Harlem Company to the Central Company and dated April 1, 1873, shall enure to the benefit of the Harlem Company and shall apply to and be binding upon the Central Company in case of any default on the part of the Central Company in respect to any of its covenants and agreements with the Harlem Company herein contained.

* * * * * * *

"8. And the Central Company covenants and agrees with the New Haven Company that the New Haven Company, paying the rent and sums of money hereinbe-
324 fore mentioned and performing the covenants and agreements aforesaid on its part to be performed, shall and may at all times during the term hereby granted, peaceably have, hold and enjoy the premises herein demised to it, without any manner of trouble or hindrance of or from the Central Company or any one claiming under it.

* * * * * * *

"12. The Railroad Terminal and so much of said distributing system as is located herein, exclusive of substation No. 1, and exclusive of the ducts, splicing chambers, manholes and appurtenances used for other than Railroad Terminal purposes, between said sub-station and 57th Street, shall be under the sole charge and direction of a Terminal Manager, who shall be appointed in writing by the Presidents of the Central and New Haven Companies,

and shall be removable at any time upon written notice by either of said Presidents. In case the Presidents shall be unable to agree upon a successor, then in that case he shall be appointed by arbitrators selected as hereinafter provided, and such appointee shall be removable in the same manner as if he had been appointed by the said Presidents. No removal of any Terminal Manager shall, without the consent of both Presidents, take effect within less than ten or more than fifteen days after the service of such notice. Except as provided in Section 5 hereof the Terminal Manager shall engage in no other service without the consent in writing of both of the said Presidents.

"13. It shall be the duty of such Terminal Manager to do all things necessary for the proper maintenance, operation and management of the Railroad Terminal and of that portion of the distributing system described in section 12 hereof for the purposes to which they are devoted under the provisions hereof, subject to and in accordance with rules and regulations agreed upon from time to time by the said Presidents.

* * * * * * *

"23. All the rights and obligations of the parties hereto granted, created, assumed or imposed in and by said Tripartite Lease, dated the first day of November, 1872, and the said four agreements supplemental thereto, dated respectively the 31st day of December, 1885, the 14th day of July, 1897, the 17th day of August, 1898, and the 23rd day of March, 1899, shall be terminated on the day on which this agreement takes effect.

* * * * * * *

"26. Nothing herein contained shall impair any of the rights of either of the parties hereto, under the agreement between the New York and Harlem Railroad Company and the New York and New Haven Railroad Company, dated March 17, 1848, as modified by arbitration, under date of June 27, 1856, and by arbitration under date of January 19, 1861, copy of which is hereto annexed."

Except for the obligation to pay $160,179.92 as a minimum rental representing a proportion of the $485,393.69 interest upon capitalized cost of the old Grand Central Depot that had to be torn down, the New Haven did not and was not required to assume any of the capital cost of the New Terminal (Testimony, pp. 44, 45). All the claims which the New Haven committee made with respect to the prior and preferential rights were under the agreement of 1848 and the twenty-five years referred to above was the period between the agreement of 1848 and the tripartite lease and the Harlem lease in 1872 and 1873 (Testimony, p. 46). The minimum rental of $160,179.92 assumed by the New Haven under the agreement of 1907 as its portion of the interest on a total expenditure of approximately $7,000,000 had been arrived at by a series of negotiations over many years with respect to the original Grand Central Depot and the various additions that had been made to it. It was considered as part of the cost of the new terminal because the old terminal had to be destroyed and somebody had to take care of the part that was so destroyed (Testimony, p. 52).

325 P. M. Cook. R. E. Freer.

On November 10, 1913 the parties entered into a further agreement supplemental to the agreement of 1907.

(The supplemental agreement was offered and received in evidence marked "Relators' Exhibit No. 14, Witness Buckland" and is made part hereof.) (Testimony, p. 50.)

This supplemental agreement involved the supports that have to be given to the buildings on Park Avenue due to the steel eyebeams that go down into the Grand Central Terminal itself. Those buildings cannot be supported except by the steel which comes down into the Terminal and is located as to its foundation between the tracks below (Testimony, pp. 50, 51). The territorial extent of the "Railroad Terminal" as defined in the agreement begins at the middle line of 59th Street and gradually broadens out. It runs down through Park Avenue and begins to broaden out at about 51st Street. At 50th Street it comes clear over to Lexington Avenue, follows Lexington Avenue down to 42d Street, includes certain subsidewalk rights in 42d Street, turns and goes beyond Vanderbilt Avenue up to what is known as the United Cigar Stores Building, run-

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ning along the northerly line of 43rd Street and the easterly line of Madison Avenue, which includes the Biltmore Hotel. Then it comes on 44th Street about half way to Vanderbilt Avenue and proceeds across the block between 44th Street and 45th Street, including therein the buildings known as the Yale Club and what is usually known as the Fraternal Building. It then proceeds to turn westerly again to the easterly line of Madison Avenue and follows that line from 45th Street to the southerly line of 48th Street, then by an irregular line proceeds northerly to the westerly line of Park Avenue, thence along the westerly line of Park Avenue to the southerly line of 56th Street and then gradually approaches the center of Park Avenue until it reaches 57th Street where it forms a part of a 66-foot right of way 33 feet on each side of the center line of Park Avenue as far north as the point of beginning. That is the "Railroad Terminal" described territorially by vertical planes (Testimony, pp. 53, 54). It is also described by horizontal planes so that the air rights were not included in the original "Railroad Terminal." There are certain horizontal planes above which the air rights existed and as to which the agreement of 1913 was made. That was the reason for the supplemental agreement because they were not included in the cross section of the terminal above a certain horizontal plane (Testimony, p. 55).

Witness in his testimony in the valuation proceeding before the Interstate Commerce Commission gave substantially the same testimony which he gave before the Court and the same exhibits were introduced (Testimony, p. 53).

So far as the witness knows no evidence was offered
327 to the contrary before the Commission (Testimony, p. 55.)

Cross-examination:

The New York, New Haven & Hartford Railroad Company does not own any stock of the New York and Harlem Railroad Company. Witness thinks that on the valuation date a majority of the stock was owned by the New York Central Railroad Company but a rather large and somewhat belligerent minority is owned by outsiders (Testimony, p. 56).

Redirect examination:

By act of June 9, 1896 the Legislature of Massachusetts incorporated The Boston Terminal Company with power to construct and maintain a union passenger station in the southerly part of the City of Boston and to provide and operate adequate terminal facilities for the several railroad companies therein authorized to hold the stock of said terminal company and for the accommodation of the public in connection therewith. Eighty percent (80%) of the capital stock of the terminal company was subscribed for and is now held by The New York, New Haven & Hartford Railroad Company and its affiliated companies, the New Haven having leased the Old Colony, the Boston and Providence and merged with the New England Railroad. The Boston & Albany Railroad Company owns the remaining twenty percent (20%). Pursuant to the act the terminal was constructed and is known as the South Station.

(The act was offered and received in evidence marked "Relators' Exhibit No. 16, Witness Buckland" and is made part hereof.) (Testimony, p. 57.)

The following sections of the act were read in
328 evidence:

"Section 1. Charles F. Choate, William Bliss, William T. Hart, Royal C. Taft, and Charles P. Clark, their associates and successors, are hereby made a corporation by the name of The Boston Terminal Company, with power to construct and maintain a union passenger station in the southerly part of the city of Boston, and to provide and operate adequate terminal facilities for the several railroad companies hereinafter authorized to hold the stock of said terminal company, and for the accommodation of the public in connection therewith.

"Section 2. The capital stock of said corporation shall be five hundred thousand dollars, and the Boston and Albany Railroad Company, the New England Railroad Company, the Boston and Providence Railroad Corporation, the Old Colony Railroad Company and the New York, New Haven and Hartford Railroad Company, being lessee of the Old Colony Railroad Company, may each subscribe for and hold one fifth portion of the said capital stock. The corporation may by by-laws regulate the terms and conditions upon which its stock may be transferred. All said capital

stock shall be paid in in cash by said railroad companies before the corporation takes any land under the provisions of this act.

"Section 3. The immediate government and direction of the affairs of said terminal company shall be vested in a board of five trustees, to be appointed at once on the organization of said company, one of whom shall be appointed by each of said railroad corporations from its directors, to hold office as such trustee at the pleasure of the corporation by whom he is so appointed; any vacancy to be filled in like manner. The trustees shall elect one of their number to be chairman, and may elect another to be vice chairman, and shall choose a clerk who shall be sworn, and a treasurer who shall give bond in the sum required by the by-laws, with surety, for the faithful discharge of his duties.

"Section 9. All said railroad companies upon the completion of said station shall use the same, and the terminal facilities provided by said terminal company on the land hereinabove authorized to be taken, for all of their terminal passenger business in Boston, instead of the passenger terminals now used by them, and the supreme judicial court, or any justice thereof, shall have jurisdiction in equity to enforce this provision; but said terminal company may contract with either of said railroad companies for the use of such separate and specified portion or portions of the terminal station hereinafter provided for as may be reasonably necessary for their respective use.

329 "Section 10. Said railroad companies hereby required to use said union station shall pay to the terminal company for such use, in monthly payments, such amounts as may be necessary to pay the expenses of its corporate administration and of the maintenance and operation of said station, and of the facilities connected therewith and owned by said terminal company, including insurance and all repairs, all taxes and assessments which may be required to be paid by said terminal company, the interest upon its bonds or other obligations issued under the provisions of this act as the same shall become payable, and a dividend, not to exceed four per cent. per annum, upon its capital stock. Each of said railroad companies shall pay for such use of said station and facilities in the proportion in which it has the use thereof, the same to be fixed by the written agreement of all of said railroad companies before the completion of said station; and in case

they fail thus to agree the board of railroad commissioners shall determine such proportions upon the application of said terminal company or of any of the railroad companies.
• • •

"Section 25. The terminal company shall pay a franchise tax to the Commonwealth upon the true market value of its capital stock, without any deduction whatever, but its real estate required by this act to be used by said railroad companies shall be assessed to and the taxes thereon shall be paid by said railroad companies, and in the assessment of franchise taxes upon said railroad companies each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act.

Counsel for the relators offered in evidence a certified copy of the testimony in the valuation proceeding before the Interstate Commerce Commission. Thereupon the following took place (Testimony, pp. 60-65):

Mr. Ross: "We object, if your Honor please, for several reasons. The record before the Interstate Commerce Commission consisting of a number of thousand pages, deals with innumerable questions of valuation, such as the price of grading, the price of rails, working capital, and other matters of that kind that are not at all in issue here today. This proceeding, of course, is not in the nature of an appeal or a review. The issues are entirely different in this case from what they were before the Commission and cer-
330 tainly we would have to object to putting in a transcript of testimony in another case where we would not have the benefit of the cross-examination of those witnesses. On the particular issues involved here, we are unable to see that this matter is in any way essential to the determination of this case."

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The Court: "I think that objection is well founded, it seems to me. It is not like an action to set aside an order of the Commission. It is not in the nature of a review or an appeal."

Mr. Hall: "Your Honor appreciates my only purpose in offering this and I think there is certainly a practical ground for my friend's objection. I am merely seeking to

do this: We are asking you to require the Interstate Commerce Commission to value what we say is our property. I should not want to be met by the suggestion there was before the Interstate Commerce Commission, so far as our rights and interests in the property are concerned, evidence that is not before your Honor, so that your Honor could not say, 'How did I know that this testimony was before the Interstate Commerce Commission?' Therefore, if my friend will concede that there was no further evidence offered with reference to our rights, then I am content. I do not want to encumber the record or to embarrass the Commission with testimony of that sort, but it is merely for that limited purpose that I offer the testimony and I take it that there is no objection on the ground this is not the proper record."

The Court: "I do not think that you have a right to offer it. I suppose that includes the testimony upon a lot of matters of valuation with respect to which the Commission did act. That is trackage, engines, power houses, and all that?"

Mr. Hall: "Yes, sir."

* * * * * * *

Mr. Hall: "I want to cover this. I do not want to have it ever raised that we did not put here before your Honor all of the testimony that we had with reference to our rights of ownership and that is why I could think of no other way than to put in the record. That is my only purpose. I do not want to prove our title thereby. I merely want to satisfy your Honor's discretion that you have before you what the Commission had."

The Court: "I do not believe I can help you as against an objection. I must sustain the objection against putting that whole record in on the chance there might be something in there."

331 Mr. Hall: "May I make the offer of proof, if the Court please? I mean, offer the testimony and your Honor will save my rights?"

The Court: "Yes."

Mr. Hall: "There is no question about its being a correct copy, is there?"

Mr. Ross: "No, we concede that is a correct copy of the testimony."

Mr. Hall: "Then the report of the Commission I am going to offer. That is admitted, is it not?"

Mr. Ross: "Yes."

* * * * * * *

The Court: "If there is anything you can point out in the record, Mr. Hall, that bears on the controversy, that is different, but when you take a great big stack of stenographer's minutes like that and offer them I will have to sustain the objection."

Mr. Hall: "My sympathy is with your Honor, of course."

The Court: "I would prefer to have something that is relevant to the issue."

Mr. Hall: "I can do this: Mr. Pengra said that inasmuch as it is a negative proposition, I am endeavoring to prevent any suggestion that we have omitted to bring before your Honor all that was before the Interstate Commerce Commission on the question of title and right to this property; that is all. I did not suppose there was any question about it and I rather hoped my friend would agree that I was right. At all events, the offer I make is the copy of the transcript of the stenographer's notes in the matter of the valuation of the property of the New York, New Haven & Hartford Railroad Company."

The Court: "If that is objected to I will sustain the objection."

Mr. Hall: "And my exception is noted."

Respondent introduced the following evidence (Testimony, pp. 66-73):

Mr. Ross: "May it please the Court, we desire to offer for the record at this time an agreed true copy of page 27 of the sworn annual report to the Interstate Commerce Commission by the New York, New Haven & Hartford Railroad Company, for the year ending June 30, 1888."

332 Mr. Hall: "To that I object on the ground that the agreement of 1848 is not ambiguous, nor does it require evidence of how the parties acted under that agree-

ment; that it was not before the Commission at the hearing on this valuation matter."

The Court: "I will overrule the objection."

Mr. Hall: "Your Honor will save my rights?"

(The document so offered was received in evidence marked "Respondent's Exhibit No. 17" and is made part hereof.) (Testimony, p. 66.)

Mr. Ross: "I would like to read the pertinent portion of this exhibit, as follows:

'The mileage of road operated does not include the following over which the Company has running arrangements: From Woodlawn Junction, New York, to Grand Central Terminal, New York City, operating by New York Central and Hudson River Railroad—12.3 miles.' "

Mr. Hall: "I suppose it will be conceded that is on the form required by the Interstate Commerce Commission?"

Mr. Ross: "I state the agreement, if your Honor please, between the parties is as indicated by initialing that this does constitute a true copy of the annual report of the New Haven Railroad to the Interstate Commerce Commission."

The Court: "Mr. Hall's request was if you would admit that was on a form prescribed by the Commission?"

Mr. Ross: "Oh, yes."

The Court: "I suppose the Commission requires them to separate the mileage which they owned from the mileage over which they operated under some arrangement other than ownership?"

Mr. Ross: "Yes; as a matter of fact, this particular exhibit was filed within a year after the Interstate Commerce Commission was organized, and I am unable to say exactly what the requirements of the Commission, if any, were at that time. I am advised there were no instructions existing at that time. I cannot testify as to that, if your Honor please.

I desire to offer what has been agreed upon between counsel as a true copy of pages 8 and 9 of the sworn annual report of the New York, New Haven & Hartford Railroad, to the Interstate Commerce Commission for the year ending June 30, 1906."

Mr. Hall: "I submit the same objection."

The Court: "The same ruling."

Mr. Hall: "I assume it is on the form that was required by the Interstate Commerce Commission?"

333 (The document so offered was received in evidence marked "Respondent's Exhibit No. 18" and is made part hereof) (Testimony, p. 68).

Mr. Ross: "The pertinent part of this exhibit is a listing of property operated on June 30th, 1906, of the New York & Harlem Railroad from Woodlawn, New York to Grand Central Depot, New York—12.03, with the notation (5) referring to the classification shown on the report 'line operated under trackage rights'."

Mr. Hall: "My rights are saved in reference to that?"

The Court: "Yes."

Mr. Ross: "We desire to offer what has been agreed upon as a true copy of pages 12 and 13 of the annual report of the New York, New Haven & Hartford Railroad Company to the Interstate Commerce Commission for the year ending June 30th, 1914."

Mr. Hall: "Same objection."

The Court: "Same ruling."

Mr. Hall: "I will not object to these if my rights will be saved as to all of them."

The Court: "Yes, same ruling."

(The document so offered was received in evidence marked "Respondent's Exhibit No. 19" and is made part hereof) (Testimony, p. 68).

Mr. Ross: "The pertinent part of this exhibit reads as follows: 'N. Y. C. & H. R. R. R., Woodlawn Junction, New York, to Grand Central Station, New York, 11.91 miles'. Listed under the classification No. 5, which, referring to the form is classified as 'line operated under trackage rights'. There is the further statement on the same page: 'Boston Terminal Company, Fort Point Channel to Boston, Massachusetts .42 miles', under the same designation.

We desire to offer what is an agreed true copy of pages 400, 400 (a), 400 (b) and 400 (c), from the sworn annual report of the New York, New Haven & Hartford Railroad Company to the Interstate Commerce Commission for the year ended December 31, 1929."

(The document so offered was received in evidence marked "Respondent's Exhibit No. 20" and is made part hereof) (Testimony, p. 69).

Mr. Ross: "The pertinent part of this exhibit is the listing as follows: 'Road operated close of year—name of road: New York Central; Woodlawn Junction, New York to Grand Central Terminal, 11.94 miles, under the classification 5.' Reference to classification 5 on the form is 'Line operated under trackage rights', and the description in the form for class 5 is as follows:

334 'Includes all tracks operated and maintained by others but over which respondent has the right to operate some or all of its trains. In a road of this class respondent has no proprietary rights but only the rights of a licensee. Include in this class also all main tracks, industrial tracks and sidings owned by non-carrier companies and individuals when the respondent operates over them, but does not have exclusive possession of them. Road held by the respondent as joint or common owner or a joint lessee under any joint arrangement should be shown in its appropriate class and the entry of the entire length of the portion jointly held. The class symbol should have the letter J attached and full particulars showing all of the joint or common title holders and the extent of their respective interest should be shown in a memorandum attached to the schedule'.

We desire to offer what has been agreed upon as a true copy of the annual report of the New York, New Haven & Hartford Railroad to its stockholders, pages 34 to 41, inclusive, for the year ending June 30th, 1906."

Mr. Hall: "To that I also object for the same reason."

The Court: "Yes."

Mr. Hall: "My rights are saved?"

(The document so offered was received in evidence marked "Respondent's Exhibit No. 21" and is made part hereof) (Testimony, p. 70).

Mr. Ross: "The pertinent parts of this exhibit are the listing on pages 34 and 35 of roads owned by reporting company and the listing on pages 36 and 37 of roads operated under lease, the reporting on pages 38 and 39 of other

roads operated under leases and the reporting on pages 40 and 41 of certain roads 'operated under trackage rights'.

Under this listing appears the name of the New York & Harlem from Woodlawn Junction, New York, to Grand Central Depot, New York, 12.03 miles. The Boston Terminal Company Fort Point Channel to Station, Boston, Massachusetts, .42 miles.

The mileage figures which I read here are for first main tracks. There are other listings for additional mileage of other tracks. There is no listing on the exhibit of this property; that is, the Woodlawn Junction to Grand Central Depot part or the Boston Terminal Company—on any of the other designations in the exhibit."

The Court: "How many designations are there? What are the number of classifications? How does it require them to report?"

Mr. Ross: "This is the New Haven's report to its own stockholders, which is not governed by any regulations of the Commission. They have used the classification road owned, second roads operated under leases, and, third, road operated under trackage rights."

Mr. Hall: "You do not claim they used a different classification than we used before the Commission for our stockholders, do you?"

335 Mr. Ross: "I think they are the same."

The Court: "Well, are those the three divisions that the report cover-, trackage owned, trackage leased and trackage over which they have certain rights?"

Mr. Ross: "The Commission authorized, if my recollection serves me properly, five classifications. Those are shown on the exhibits which have just been introduced. These classifications are, first, line owned by respondent; second, line owned by proprietary company; third, line operated under lease for a specified sum, lessor being (a) an affiliated corporation or (b) independent or non-affiliated with the respondent. Fourth, line operated under contract or agreement for contingent rent, owner being (a) an affiliated corporation or (b) independent or not affiliated; and fifth, line operated under trackage rights. I have previously read the provision of the form by which a road held by respondent as joint or common owner may be designated by the symbol J.

We desire to offer an agreed true copy of the annual report of the New York, New Haven & Hartford Railroad to its stockholders, pages 52 to 59, inclusive, for the year ending June 30, 1914. Without reading the details from this, I should say that the designations are identical on this exhibit as on the prior Exhibit, No. 21, which was likewise a report of the corporation to its stockholders."

(The document so offered was received in evidence marked "Respondent's Exhibit No. 22" and is made part hereof) (Testimony, pp. 72, 73).

Mr. Hall: "Subject to my objection."
The Court: "Yes."
Mr. Ross: "The Commission has no further evidence."

The exhibits which are herein made part hereof are appended hereto at length at the instance of the relators.

The foregoing contains the substance of all the evidence given at the trial.

On April 1, 1931 the Court rendered its decision in the form of a memorandum filed in said cause. On April 3, 1931 it was adjudged and ordered that the rule to show cause issued upon the petition filed therein be discharged and the petition dismissed. From the foregoing judgment the relators by their attorneys of record in open court noted an appeal to the Court of Appeals of the District of Columbia.

336 Thereupon, as all of the exceptions herein reserved on behalf of the relators were duly noted and allowed as aforesaid and duly entered upon the minutes of the Court, and because the matters and things hereinbefore recited are not matters of record, in order to make the same a part of the record herein, which is hereby ordered, so that the relators may have the case reviewed on appeal, the relators by their attorneys of record move the Court to sign and seal this, their bill of exceptions, to have the same force and effect as if each and every one of said exceptions had been separately signed and sealed, which motion is granted by the Court; and thereupon the relators tender this, their bill of exceptions, and request the Court

to sign and seal the same, which is accordingly done, now for then, this 21st day of May, 1931.

ALFRED A. WHEAT,
Chief Justice.

Approved:
JOHN L. HALL,
CHARLES O. PENGRA,
P. M. COOK,
Attorneys for the Relators.
THOMAS M. ROSS,
F.,
R. E. FREER,
Attorneys for the Respondent.

337 RELATORS' EXHIBIT No. 1.

Witness Buckland.

Laws of New York, Fifty-fourth Session.

Chap. 263.

An Act to Incorporate the New-York and Harlaem Rail-Road Company.

Passed April 25, 1831.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Corporation Created.

§ 1. Benjamin Bailey, Mordecai M. Noah, Benson M'Gown, James B. Murray, Charles Henry Hall, Moses Henriques, Isaac Adriance, Thomas Addis Emmet, Gideon Lee, Silas E. Burrows, Samuel F. Halsey, Cornelius Harsen, and Robert Stewart, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of the New-York and Harlaem Rail-Road Company, with power to construct a single or double rail-road or way, from any point on the north bounds of Twenty-third street, to any point on the Harlaem river, between the east bounds of the Third avenue and the west bounds of the Eighth avenue, with a branch

to the Hudson river, between One hundred and twenty-fourth street and the north bounds of One hundred and twenty-ninth street, to transport, take, and carry property and persons upon the same, by the power and force of steam, of animals or of any mechanical or other
338 power, or of any combination of them which the said company may choose to employ; and by that name, they and their successors shall be and they are hereby vested with the right and privilege of constructing, erecting, building, making and using a single or double rail-road or way for the purpose aforesaid, and for the term of thirty years from the passage of this act.

Time Limited to Finish Road.

§ 2. If the corporation hereby created shall not, within six months from the passage of this act, locate the route of said rail-road or way and the branch to the same, and make a survey of such location, and file a map thereof in the register's office of the city and county of New-York, and within two years from the passage of this act commence, and within four years from the passage of this act construct, finish, and put in operation the said single or double rail-road or ways, then the said corporation shall thenceforth forever cease, and this act shall be null and void; but no such map shall be filed until the same shall have been submitted to and approved by the common council of the city of New-York; such approbation shall be expressed by a joint resolution of the said common council, declaring their approbation of the map, and of the route of the said rail-road indicated therein.

Stock.

§ 3. The capital stock of the said company shall be three hundred and fifty thousand dollars, and the stock shall be divided into shares of fifty dollars each, and shall be deemed personal property, transferrable in such manner as the by-laws of said corporation shall direct.

Subscriptions.

§ 4. Isaac Adriance, Mordecai M. Noah, Benjamin Bailey, Moses Henriques, Thomas Addis Emmet, Benson M'Gown,

Silas E. Burrows, Samuel F. Halsey, Cornelius Harsen, and Robert Stuart, shall be commissioners, the duty of whom it shall be, on or before the first Monday of June next after the passing of this act, at some suitable place in the city of New-York, to open books to receive subscriptions to the capital stock of the said corporation, and twenty days public notice shall be given by the said commissioners of the time and place of opening such books, in one of the public newspapers of the said city; and said books shall be kept open for three days from ten to two o'clock of each day, and within ten days after the said stock shall be subscribed, to give a like notice for a meeting of the stockholders, at such time and place as the said commissioners shall appoint, to choose thirteen directors, and such election shall be then and there made by such of the stockholders as shall attend for that purpose, either in person or by proxy, each share of the capital stock entitling the stockholder to one vote; and the said commissioners shall be inspectors of the first election of directors of the said corporation, and shall certify, under their hands, the names of those duly elected, and deliver over the subscrip-
339 tion books to the said board of directors; and the time and place of holding the first meeting of the first directors shall be fixed by the said commissioners, and the said board of directors shall have power to appoint an engineer, and cause such examinations and surveys for the said rail-road to be made as may be necessary to the selection by them of the most advantageous line, course or way for the said way; and the said board of directors shall, after such examinations and surveys shall be made, select and under their hands and seals, designate the line, course or way, which they may deem most advantageous for the said rail-road, one of which certificates shall be filed in the office of the register of the city and county of New-York; which line, course or way, so selected and certified, shall be deemed the line, course or way on which the said corporation shall construct, erect, build or make their single or double rail-road or ways as hereinafter mentioned; the expenses of all which surveys and examinations, and all manner of incidental expenses relating thereto, shall be paid for by the said corporation.

Distribution of Stock.

§ 5. The commissioners shall proceed to distribute the capital stock of the said corporation among the subscribers thereto; and in case there should be subscriptions to more than the amount of such stock, within the time above prescribed, it shall be the duty of the said commissioners to apportion the same among the subscribers thereto, in such manner as they shall deem most advantageous to the interest of the institution; but no person who shall have subscribed for twenty shares or upwards, shall, upon such distribution, receive less than twenty shares, unless the subscriptions for the said last mentioned or a less number of shares, shall exceed the whole amount of the capital stock; nor shall there be allowed to any one of the commissioners or subscribers, directly or indirectly, or to any one in trust for him, more than two hundred shares of said stock, if, without such allowance, the whole of the stock be taken up; and if, at the expiration of the third day on which the subscription books shall have been kept open, the whole amount of the capital stock shall not have been subscribed, then the commissioners may subscribe for the remaining shares.

Officers.

§ 6. The said board of directors to be chosen at such meeting, or at such annual election, shall, as soon as may be after every election, choose out of their own number one president, and one other person to be vice-president; and in case of the death, resignation or absence of the president, the vice-president shall preside until the annual election thereafter, or until he shall return, or another president shall be chosen; and in case of the death or resignation of the president or vice-president, or of any director, such vacancy or vacancies may be filled for the remainder of the year, wherein they may happen, by the board of directors; and in case of the absence of the president and vice-president, the board of directors shall have power to appoint a president pro tempore, who shall have and exercise such powers and functions as the by-laws of the said corporation may provide.

Election.

§ 7. In case it should at any time happen that an election of directors shall not be made on any day when pursuant to this act it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but such election may be held at any other time directed by the by-laws of the said corporation, within sixty days after the day on which it should have been held.

To Enter Upon Lands. Appraisement of Lands.

§ 8. The said corporation are hereby authorized, by their agents, surveyor, and engineers, to enter upon such route, place or places, to be designated as aforesaid by the said directors, as the line, course, road and way whereon to construct their single or double rail-road or ways; and it shall be lawful for the said corporation to enter upon and take possession of and use all such lands and real estate as may be indispensable for the construction and maintenance of their single or double rail-road or ways, and may also receive, hold and take all such voluntary grants and donations of land and real estate as shall be made to the said corporation, to aid in the construction, maintenance and accommodation of the said single or double rail-road, or ways, provided that all lands or real estate thus entered and taken possession of and used by the said corporation, and which are not donations, shall be purchased by the said corporation, of the owner or owners of the same, at a price to be mutually agreed upon between them; and in case of a disagreement of price, and before the making of any portion of the road upon said land, the said corporation or the owner of such land may apply by petition to the vice-chancellor of the first circuit, who upon such application shall cause such notice to be given to the other party as he shall deem proper and sufficient, appointing therein the time and place of hearing the parties, at which time and place, upon proof that the notice directed has been given, the said vice-chancellor shall direct the manner of ascertaining the damages which the owner of such land or real estate will sustain by the occupation thereof by the said corporation; and the said vice-chancellor shall appoint three competent and disinterested commissioners, who shall be freeholders and residents of the city of New-York, and

who shall, under the direction of the said vice-chancellor, make appraisements and determine said damages and report in writing under their hands to the said vice-chancellor, who shall examine the same and hear the parties in relation thereto if he shall deem it expedient, and increase or diminish the damages if he shall be satisfied injustice has been done. The report shall contain a minute and accurate description of the land appraised. The
341 commissioners shall be allowed three dollars each a day for their services. Upon proof to the said vice-chancellor, to be made wthin thirty days after his determination of payment to the owner or of the depositing to the credit of the owner in such incorporated moneyed institution, as the said vice-chancellor shall direct, of the amount of said damages and the payment of all expenses, the said vice-chancellor shall make an order or decree, particularly describing the land and reciting the appraisement of damages and the mode of making it, and all other facts necessary to a compliance with this section of this act; and when the said order or decree shall be recorded in the office of the register of the city and county of New-York, the said corporation shall be seised and possessed of the fee simple of all such land or real estate, and may enter upon, take and use the same for the purpose of the said road.

Guardian to be Appointed.

§ 9. In case any married woman, infant, idiot or insane person or non-resident of the state, who shall not appear after such notice, shall be interested in any such land or real estate, the said vice-chancellor shall appoint some competent disinterested person to appear before the said commissioners and act for and in behalf of such married woman, infant, idiot, insane person or non-resident.

Single or Double Rail-Road.

§ 10. The said corporation is hereby authorized to construct, erect, build, make and use a single or double railroad or ways, of suitable width and dimensions, to be determined by the said corporation, on the line, course and way, selected or designated by them in manner aforesaid, and shall have power to regulate the time and manner in

which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect and maintain toll-houses and such other buildings for the accommodation of their concerns, as they may deem suitable to their interests: The said corporation shall not take any lands without the consent of the owner or owners thereof, exceeding forty feet in width from east to west, and shall in case of their locating the route of the said rail-road in or along any public street or avenue now laid out on the map or plan of the city of New-York, leave sufficient space in the said street or avenue on each side of the said rail-road for a public highway for carriages, and for a side walk for foot passengers.

Crossing Streams or Roads.

§ 11. Whenever it shall be necessary for the construction of their single or double rail-road or way, to intersect or cross any *stream of water or water courses*, or any road, street or highway, it shall be lawful for the said corporation, with the consent and approbation of the mayor, aldermen and commonalty of the city of New-York, to construct their single or double rail-road or ways across or upon the same; provided that the corporation shall restore the stream or water course or road, street or highway thus intersected, to its former state, or in a sufficient
342 manner not to have impaired its usefulness, and shall moreover erect and maintain sufficient fences upon the line of the route of their single or double rail-road or ways.

Tolls.

§ 12. It shall be lawful for the company hereby incorporated, from time to time to fix, regulate and receive the tolls and charges by them to be received for transportation of property or persons on the single or double rail-road or ways aforesaid, hereby authorized to be constructed, erected, built, made and used.

Penalty.

§ 13. If any person or persons shall wilfully do or cause to be done any act or acts whatever, whereby any building,

construction or work of the said corporation, or any engine, machine or structure, or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall forfeit and pay to the said corporation double the amount of damages sustained by means of such offence or injury, to be recovered in the name of the said corporation, with costs of suit, by action of debt.

Calls on Stockholders.

§ 14. Each subscriber shall pay twenty per cent on the amount subscribed by him, at the time of making such subscription; and it shall be lawful for the directors or a majority of them, to require payment of such other sums of the capital stock at such times and in such proportions and on such conditions as they shall deem fit, under the penalty of the forfeitures of all previous payments thereon, and shall give notice of the payments thus required, and of the place and time when the same are to be paid, at least thirty days previous to the payment of the same, in a public newspaper published in the city of New-York.

General Powers.

§ 15. The said corporation shall possess the general powers, and be subject to the general restrictions and liabilities prescribed by such parts of the eighteenth chapter of the first part of the Revised Statutes as are not repealed.

Restriction.

§ 16. Nothing in this act shall be deemed to authorise the said corporation to construct or use their single or double rail-road or way across or along any of the streets or avenues as designated on the map of the city of New-York, whether such streets or avenues shall have been opened or not, without the consent of the mayor, aldermen and commonalty of said city, who are hereby authorised to grant permission to the said corporation to construct their said rail-road or way across or along said streets or avenues, or prohibit them from constructing the same, and after the same shall be constructed, to regulate the time and manner of using the same, and the speed with which carriages shall

be permitted to move on the same or any part thereof; and nothing in this act contained shall prevent the legis-
343 lature from granting to any other corporation or persons, the right of constructing a rail-road or roads parallel with the one herein mentioned, or any part of it, on any lands, street, road or avenue not occupied by the rail-road or way hereby authorised, or the right of crossing or intersecting the same at any point or points, without making compensation for injuries sustained thereby.

Common Council.

§ 17. No person who shall at the time be a member of either branch of the common council of the city of New-York, shall act as commissioner or director of said corporation under this act.

Rights Reserved.

§ 18. The legislature may at any time alter, amend, modify or repeal this act.

344 RELATOR'S EXHIBIT No. 2.

Witness Buckland.

Railroads.

Incorporating the New York and New Haven Railroad Company.

Passed 1844.

Resolved by this Assembly, Sec. 1. That Joseph E. Sheffield, Samuel J. Hitchcock, William A. Reynolds, Nathan Smith, Nathaniel R. Clark, P. P. F. DeGrand, S. S. Littlehall, Elihu Townsend, Anson G. Phelps, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of *The New York and New Haven Railroad Company;* and by that name to sue and be sued, plead and be impleaded in any court in this state, to make and have a common seal, and the same to break, alter or renew at pleasure. And the company is hereby vested with all powers, privileges and immunities which are or may be necessary to carry into

effect the purposes and objects of this act as herein after set forth. And said company is hereby authorized and empowered to locate, construct and finally complete a single, double or treble railroad or way from some suitable point in the city of New Haven to the city of Bridgeport, and thence westerly to the west line of this state towards the city of New York, in such route as shall be deemed most expedient, and to transport, take and carry property and persons upon said railroad or way by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them which said company may choose to apply. And for the purpose of constructing said railroad or way, the said company is hereby authorized to lay out their road not exceeding six rods wide through the whole length; and for the purposes of cutting and embankments, and for the purpose of necessary turnouts and for obtaining stone and gravel, may take as much more land as may be necessary for the proper construction and security of said road; with permission also to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stocks with any other railroad corporation; *provided*, that all damages that may be occasioned to any person or corporation by the taking of any such land or materials aforesaid for the purpose aforesaid shall be paid for by said company in manner herein after provided.

Sec. 2. That the capital stock of said company shall be two millions of dollars, with the privilege of increasing the same to three millions of dollars, and to be divided into shares of one hundred dollars each; which shares shall be deemed personal property, and be transferred in such manner and at such places as the by-laws of said company shall direct.

Sec. 3. That the persons named in the first section hereof, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such times and places as they, or a majority of them, may appoint, and shall give such notice of the times and places of opening said books as they may deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for the purpose; and if more than twenty thousand shares of stock shall be subscribed they shall have the power to make the shares so subscribed the capital stock of the company; *provided* they shall not exceed thirty thousand

shares, and in case the subscription shall exceed thirty thousand shares, the same shall be reduced and
345 apportioned in such manner as may be deemed most beneficial to the corporation.

Sec. 4. That the immediate government and direction of the affairs of the company shall be vested in a board of nine directors, who shall be chosen by the stockholders of said company in the manner herein after provided, and shall hold their offices until others are duly elected and qualified to take their places as directors; and the said directors (four of whom, the president being one, shall be a quorum for the transaction of business) shall elect one of their number to be president of the board, who shall also be president of said company; they shall also choose a clerk, who shall be sworn to a faithful discharge of his duty, and a treasurer, who shall give bonds with surety to said company in such sum as the said directors may require, for the faithful discharge of his trust.

Sec. 5. That the persons authorized by the third section of this act to open the books for subscription to the capital stock, are hereby authorized, after the books of subscription to the capital stock of said company are closed, to call the first meeting of the stockholders of said company in such way and at such time and place as they may appoint, for the choice of directors of said company; and in all meetings of the stockholders of said company, each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy; and the annual meeting of the stockholders of said company for the choice of directors, shall be holden at such time and place, and upon such notice as the said company in their by-laws may prescribe.

Sec. 6. That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause be deemed to be dissolved, but such election may be holden on any day which shall be appointed by the directors of said company; and said directors shall have power to fill any vacancy which may occur by death, resignation or otherwise.

Sec. 7. That the directors shall have full power to make and prescribe such by-laws, rules and regulations as they shall deem needful and proper touching the disposition and

management of the stock, property, estate and effects of said company, not contrary to this charter or the laws of this state, or of the United States, the transfer of shares, the duties and conduct of their officers and their servants, touching the election of and meeting of the directors, and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby empowered to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the object for which this incorporation is granted, and may by their agents, surveyors, engineers and servants, enter upon such route or places, (to be designated by the directors and approved by three commissioners to be appointed by the general assembly for that purpose, who shall have no interest in said railroad,) after such notice given as the commissioners shall deem reasonable, to the persons whose lands may have been taken, and after hearing all objections which may by such persons be made to the location made by the said directors, as to the location, line, course, road or way whereon to construct said railroad or way. And it shall be lawful for said company to enter upon and use all such lands and real estate as may be necessary for them in
the manner and for the purposes set forth in the first
346 section hereof; and said company shall be holden to
pay all damages that may arise to any person or persons; and if the person or persons to whom damage may so arise and said company cannot agree as to the amount of such damages, it shall be the duty of said company to apply to the superior court of the county in which the real estate damaged may be situated, and to cause notice to be given to the adverse party of such application, and thereupon said superior court shall appoint three disinterested and judicious freeholders, to assess the amount of such damages, and said freeholders, after being sworn, shall give notice to the parties of the time and place of their meeting on the business of their appointment, at which time and place they shall proceed to hear the parties and to inquire into the extent of the damages, and shall assess just damages to the person or persons whose real estate may be taken or injured, which assessment shall be in writing, under the hands of said freeholders, and the same shall be returned to the clerk of said superior court, who shall record it, and when so returned and recorded, such assessment shall have the effect of a judgment, and execution may

issue at the end of sixty days from the time when such assessment shall be so returned, in favor of the persons respectively to whom damages may be assessed, for the amount so to them assessed. *Provided,* that said railroad shall not be opened across the lands of any person until the damages assessed to such person shall have been paid or secured to be paid to his satisfaction, and that the said damages shall be so paid or deposited with the treasurer of the county within sixty days after the same shall have been finally determined; *provided,* that it shall not be necessary in order to the location of said road by the directors and the approval thereof by the commissioners, that the width thereof shall be definitely established by said directors, or commissioners previous to said location; but before the damages shall be assessed to any landholder by the said appraisers, the width of said railroad shall be definitely fixed and established by said directors, over and across the land so taken upon one or both sides of the line of the road so located. And said company may at any time before the completion of said road alter and change any part of the location thereof, or discontinue such part thereof as in their opinion convenience or necessity may require to be changed or discontinued, subject to the approval of the commissioners on said road, and the other requirements of said charter. *Provided further,* that in case the persons required by this section to be notified shall have no place of residence in this state known to the occupant of the land over which said road passes, or to any of the directors or commissioners of said company, then a notice published for six weeks successively in two newspapers printed in New Haven, stating what proceedings are intended by said company to be instituted, shall be sufficient notice to such non-resident landholder; and when the place of residence of any such landholder is known to the occupant of the land, or any director or commissioner aforesaid, and is out of this state, then a duplicate original notice, or a true and attested copy of the original notice, deposited in the post office, post-paid, directed to such person eight weeks before the hearing is to be had, shall be sufficient notice according to said charter; or any judge may give an order of notice, as in case of a bill in equity, in any of the cases aforesaid.

Sec. 8. That when the lands or other property or estate of any *feme-covert,* infant or person *non compos mentis,* shall be necessary for the construction of said railroad, said lands may be taken, notice being given to the
347 husband of such *feme-covert,* and the guardian of such infant or person *non compos mentis,* and they may respectively release all such damages for any lands or estate taken and appropriated as aforesaid, as they might do if the same were holden in their own right respectively.

Sec. 9. That said company is hereby authorized to construct, erect, build, make and use a single, double or treble railway or road of suitable width and dimensions, to be determined by the directors of said company, on the line or course by them designated, and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect and maintain toll houses and other buildings for the accommodation of their concerns, as they may deem suitable for their interests. *Provided,* that the commissioners on said railroad, within three days after approving the route thereof within said cities of New Haven and Bridgeport, respectively, shall lodge with the clerks of said cities, respectively, a written description of the route so approved by them within the limits of said respective cities, which shall be and remain the route of said railroad, unless within thirty days after said description is so lodged with such clerk, either of said cities, at a city meeting legally warned for that purpose, shall appeal from the doings of said commissioners to a judge of the superior court, who upon a hearing of said city and railroad company, shall have power to set aside the aforesaid doings of said commissioners, in case said city is aggrieved thereby. And in case said judge, upon such hearing, shall not set aside said doings of said commissioners, the route so approved by them shall be and remain the route of said railroad; and in case said judge shall set aside said doings of said commissioners, the route of said railroad within said city shall be designated and approved anew, in the manner prescribed in said charter, with the same right of appeal. *Provided further,* that after said route of said railroad shall have been finally established as aforesaid, said corporation shall construct that part of said road within the limits of the cities of New Haven and Bridgeport, under

the direction of the court of common council of said cities respectively.

Sec. 10. That whenever it shall be necessary for the construction of their single, double or treble railroad or way to intersect or cross any stream of water or water-course, or any road or highway, it shall be lawful for said company to construct said railroad across or upon the same; but the said company shall restore the said stream or water-course, or road or highway thus intersected, to its former state, or in sufficient manner not to impair its usefulness. And in all cases when any road or public highway is so located that said railroad cannot be judiciously laid out and constructed across or upon the same, without interfering therewith, in such case or cases said corporation may, by their engineer, cause such road or roads to be changed or altered in such manner that said railroad may be made on the best site of ground for that purpose; *provided* said corporation shall put such road in as good repair as at the time of changing or altering the same. And said corporation may apply to any judge of the superior court, who may by law judge between the parties, who, after notice given, may appoint three disinterested persons to determine whether said corporation have complied with the provisions aforesaid; and if approved by them, their decision shall be final.

Sec. 11. That it shall be lawful for the company
348 hereby incorporated, from time to time to fix, regulate and receive the tolls and charges by them to be received for transportation of persons or property on their single, double or treble railroad or way, aforesaid, hereby authorized to be constructed, erected, built or used, or upon any part thereof. *Provided,* that a uniform rate per mile shall be charged for the transportation of such passengers or freight as shall be received from or delivered to the several railroads in this state with which said railroad may be connected; *and provided also,* that it shall be the duty of said company to run their trains each way for passengers, at such times and in such manner as to afford reasonable facilities for receiving passengers from and delivering them to each of the other railroads in this state with which said road may be connected.

Sec. 12. That if any person shall willfully do or cause to be done any act or acts whatever, whereby any building,

construction or works of said company, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said corporation double the amount of damages sustained by means of such offense or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt.

Sec. 13. That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company, at such times and in such proportions and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment, pursuant to the requisition of the board of directors, the stock of such stockholder, or so much thereof as shall be necessary, may be sold by the directors of said corporation, at public auction, after the lapse of thirty days from the time when the payment became due; and the surplus money, the avails of such sale, after deducting the payments due and interest thereon, and the necessary expenses of the sale, shall be paid over to such negligent stockholder.

Sec. 14. That the legislature may authorize any company to enter with another railroad at any point of said New York and New Haven railroad, paying for the right of using the same, or any part thereof, such a rate of toll as the directors of the said New York and New Haven Railroad Company may from time to time prescribe, and complying with such rules and regulations as may be established by said New York and New Haven Railroad Company.

Sec. 15. That should it become necessary to cross Housatonic river within six miles of Washington bridge, said company are hereby authorized and empowered to make said crossing or viaduct for the sole and exclusive accommodation of the travel on the said railroad; and it shall not be lawful for said company to permit the passing of the said crossing or viaduct by carriages of any description, other than those which are adapted to the traveling on the railroad, nor by horses not attached to such railroad carriages, nor by persons on foot, nor for any other travel whatever, except for such persons, carriages or horses as may be employed in the immediate service of said com-

pany.

Sec. 16. That if said company shall not expend the sum of one hundred thousand dollars upon said railroad or way, within two years from the rising of this assembly, or if they shall not construct and complete and put in
349 operation a single, double or treble railroad or way, as hereinbefore authorized, within four years after the passage of this act, then the rights, privileges and powers of said corporation shall be null and void. The sum of one hundred thousand dollars aforesaid to be expended in equal portions upon the road between New Haven and Bridgeport, and upon the road between Bridgeport and the west line of the state.

Sec. 17. That the capital stock of said company shall be assessed at its just value in money, and taxed at the same rate as personal estate.

Sec. 18. *It is hereby provided,* that nothing herein contained shall be construed to prejudice or impair any of the rights now vested in the Washington Bridge Company.

Sec. 19. Whenever said road shall cross any streams or creeks navigated by vessels, at or above the place of such crossing, the said company shall erect draws of such width or culverts of such height as will suitably and conveniently accommodate such navigation, the places where such draws or culverts shall be erected, and the width or height of said culverts or draws being first determined by the commissioners on said road; and all vessels shall be permitted at all times to pass such draws without payment of toll; and suitable persons shall be provided by said company to open and shut said draws on due notice of the approach of said vessels. *Provided nevertheless,* that the draw in the bridge of the said road over the Housatonic river shall not be less than forty feet in width.

Resolved further, Sec. 20. That this act may be altered, amended or repealed at the pleasure of the general assembly.

350 RELATOR'S EXHIBIT No. 3.

Witness Buckland.

It is hereby agreed between the New York and Harlem Railroad Company and an Association of persons about to apply to the Legislature of the State of New York for a Railroad Charter in the County of West Chester from the

Western line of Connecticut to the City of New York by George L. Schuyler their Agent as follows: Both parties shall use their best efforts for the passage of such an Act,—Upon the passage of the Act the two Companies shall agree to connect their several roads at or near William's Bridge,—Westchester,—which point of connexion may be provided for in said Bill,—When the New Haven Company shall have completed the road from Williams' Bridge to Byram River, they shall have the right to run their Cars and Engines for Passengers and Freight over the Harlem Company's Road from the point of junction as aforesaid to the City of New York and as far over the same in the said City as the said Company's road shall extend,—for the compensation herein after mentioned,—the said New Haven Company furnishing their own haulage.

The said New Haven Company shall within three years from the passage of the Act finish their said road from the point of junction to the Connecticut line; and as a Compensation for the use of the Harlem Company's road, shall permit the said Harlem Company to carry over the said extension from Williams' Bridge to Byram, all of the Westchester County passengers,—the said Harlem Com-
351 pany furnishing their own haulage,—with as many trains as they may deem necessary provided they be so far under the control of the New Haven Company's Superintendent as not to interfere with the time of the regular trains of the New Haven Company. The Harlem Company hereby reserving to themselves the Exclusive right to the West Chester County passengers and granting to the New Haven Company the Exclusive freight from Byram River to Williams' Bridge.

The Harlem Company do further consent to furnish to the New Haven Company room for their Engine and Car House at thirty third Street, in no event to exceed one half the Harlem's Company lot at that place, at the rate the same cost the said Harlem Company; being principal and interest upon the investment for that purpose.

The said Harlem Company do further agree to grade and construct a double track to be laid with heavy H Rail from Harlem River to the aforesaid point of junction to be made in a manner to be approved by the Chief Engineer of both roads; The New Haven Company agreeing to furnish the money, necessary to construct and lay said double track,

to the said Harlem Company upon their bonds with seven per cent interest payable five years from date to be secured by a Mortgage on said Road;—Each party to keep their own Road in good repair, at their own expense.

January 10th, 1846.

352 SAMUEL E. LYON,
Committee of the N. Y. & H. R. R. Co.

353 [Endorsed:] 1846. N. Y. & N. Haven R. Rd. Co. Memorandum of Agreement with Harlem R. Rd. Co., 10th January 1846. Rec. # 202. 1846. Mem. of Harlem & N. Haven R. Rds.

354 At a meeting of the Directors of the New York & Harlem R. Rd. Co. held at their Office on Monday, January 5th, 1846, when the following resolution was passed—

On motion of Samuel E. Lyon, Resolved that a committee be appointed to confer with the New Haven Company—on the subject of a connection with this Company's road and report thereon to this Board. Whereupon S. E. Lyon was appointed said committee.

At a subsequent meeting of the Board held at their office Jany. 12th, 1846, when the following Resolution was also passed

Samuel E. Lyon from the committee on conference with the New Haven Company reported in writing which is hereby accepted and on Motion of Doctor F. Ferris, *Resolved*, that it be referred back to the same Committee to carry out the provisions of the same and report further progress to this Board.

The above is a correct copy from the minutes.

WM. S. CARMAN,
Secy. N. Y. & H. R. R. Co.

355 At a meeting of the Directors of the New York & Harlem R. Rd. Co. Jany. 28/46, Mr. Lyon from the Committee of Conference with the New Haven Company having reported an agreement duly executed with said Company by virtue of the power and authority confered upon him by the resolution of this Board dated January 12/46 on motion of Mr. Lyon. Resolved that the agreement heretofore executed as aforesaid be and the same is hereby

fully ratified and confirmed by and in behalf of this Company—Adopted.

The above is a correct copy from the minutes.

WM. S. CARMAN,
Secy. N. Y. & Harlem R. R. Co.

356 RELATORS' EXHIBIT No. 4.

Witness Buckland.

Whereas at a Meeting of the New York and New Haven Railroad Company held at the office of Messrs. R. and G. L. Schuyler at the City of New York on the twentieth day of January 1846, the following Resolution was unanimously adopted: "Resolved that the Committee in charge "of the Negotiation with the New York and Harlem Rail- "road Company consisting of Messrs. R. Schuyler, Bishop "and Elihu Townsend be authorized and have full powers "to consummate and execute a formal agreement in behalf "of this Company with the New York and Harlem Railroad "Company upon the basis of the arrangement already "made with the Committee of the New York and Harlem "Railroad Company as reported by them at this meeting." Attest: George L. Schuyler, Secretary; as appears by the certified copy of the original resolution attested by the Signature of George L. Schuyler, Secretary, hereto annexed; *And Whereas* Mr. Samuel E. Lyon has been appointed sole committee with full powers on behalf of the said New York and Harlem Railroad Company to execute and deliver in due form of law the agreement above mentioned on the part of the said New York and Harlem Railroad Company, as appears by the Certificate duly attested hereto annexed; *Now therefore* It is hereby mutually understood and agreed by and between the said New York and New Haven Railroad Company represented by Messrs. Schuyler, Bishop and Townsend as aforesaid, and the New York and Harlem Railroad Company represented by Mr. Samuel E. Lyon as *as* aforesaid, as follows:

357 1st. The two Companies by their officers, friends and agents shall use their best efforts to obtain the passage of an Act through the Legislature of the State of New York authorizing the New York and New Haven Railroad Company to extend their road from the Western line of the State of Connecticut to the City of New York.

2nd. After the passage of such an Act the two Companies shall agree to connect their several roads at or near Williams' Bridge,—Westchester County,—which point of connection may be provided for in said bill.

3d. When the said New York and New Haven Railroad Company shall have completed their road from Williams' Bridge to Byram River they shall have the right to run their Engines and Cars for Passengers, Freight, Mails, Expresses &c., over the New York and Harlem Company's road from the point of junction as aforesaid to the City of New York and as far over the same in the said City as the said Company's road shall extend,—for the compensation hereinafter mentioned,—the said New York and New Haven Company furnishing their own haulage.

4th. The said New York and New Haven Company shall within three years from the passage of the Act above mentioned, construct and finish their said road from the point of junction as aforesaid to the Byram River, and as a compensation for the use of the New York and Harlem Company's road shall permit the said New York and Harlem Company to carry over and upon the said extension from Williams' Bridge to Byram River all the Westchester County Passengers,—the said New York and Harlem Company furnishing their own haulage,—with as many
358 trains as they may deem necessary, *Provided* they be so far under the control of the New York and New Haven's Superintendent, as not to interfere with the time of the New York and New Haven Company's regular trains,—the New York and New Haven Company hereby granting to the said New York and Harlem Railroad Company the exclusive right to the Westchester County Passengers, reserving to themselves all other business which may be carried on said Railroad between Byram River and Williams' Bridge.

5th. The New York and Harlem Company do further consent to furnish to the New York and New Haven Company room for their Engine and Car House at Thirty-third Street and Forty second Street—in no event to exceed one-half the New York and Harlem Company's real estate at those places—at the rate the same cost the New York and Harlem Company being principal and interest upon the investment for that purpose.

6th. The said New York and Harlem Company do further agree to grade and construct a double track to be laid with heavy H. Rail from Harlem River to the aforesaid point of junction; to be made in a manner to be approved by the Chief Engineer of both roads; the said New York and New Haven Company agreeing to furnish the money necessary to construct and lay said double track, to the said New York and Harlem Company upon their bonds with seven per cent interest, payable five years from date to be secured by a mortgage on said Road.

7th. It is hereby understood and agreed that each Company is to keep its own road in good repair at its
359 own expense.

8th. This Agreement shall continue in force and be binding upon both Companies during the term for which their Charters have been granted, and for any renewals thereof.

In witness whereof the said New York and New Haven Railroad Company represented by Messrs. R. Schuyler, Alfred Bishop and Elihu Townsend, Committee specially authorized for that purpose; and the New York and Harlem Railroad Company by Mr. Samuel E. Lyon, Committee in like manner specially authorized in behalf of said Company have duly executed these presents in duplicate this twenty-second day of January, A. D. 1846.

ROBERT SCHUYLER.
ELIHU TOWNSEND.
A. BISHOP.
SAMUEL E. LYON.

360 At a meeting of the New York and New Haven Railroad Company held at the office of Messrs. R. & G. L. Schuyler at the City of New York on the twentieth day of January 1846, the following Resolution was unanimously adopted:

"Resolved that the Committee in charge of the Negotia-
"tion with the New York and Harlem Railroad Company
"consisting of Messrs. R. Schuyler, Bishop, and Elihu
"Townsend be authorized and have full powers to consum-
"mate and execute a formal agreement in behalf of this
"Company with the New York and Harlem Railroad Com-
"pany upon the basis of the arrangement already made

"with the Committee of the New York and Harlem Rail-"road Company as reported by them at this meeting."

Attest:

GEORGE L. SCHUYLER,
Secretary.

A true copy from the Minutes.

GEORGE L. SCHUYLER,
Secretary.

New York, January 21st, 1846.

361 In accordance with, and to carry out the provisions of the Within Agreement and especially of Article 2nd of the same, The New York and New Haven Railroad Company and the New York and Harlem Railroad Company, hereby mutually agree that the point of junction and connection between the two companies,—"at or near Williams' Bridge"—referred to in said Agreement, be fixed and established, and the same is hereby fixed and established at a point on the line of the New York and Harlem Railroad one mile and Sixty two chains north of the Depot of the New York and Harlem Railroad Company,—as the same now stands,—at Williams' Bridge.

In witness whereof the two Companies have caused this Agreement to be duly executed this Twelfth day of February, A. D. 1847, under their respective seals and attested by the signatures of their Presidents.

ROBERT SCHUYLER, [SEAL.]
Pres. New York and New Haven R. R. Co.
JOHN H. DYKIN, [SEAL.]
Presdt.

362 Endorsed: New York and New Haven Railroad Company and New York and Harlem Railroad Company. Agreement. 22 Jany., 1846.=entered on Record pp. 25, 26, 27= Secretary's File No. 2-0-1; Valuation Reference 2-0-2.

363 RELATOR'S EXHIBIT No. 5.

Witness Buckland.

Laws of New-York, Sixty-ninth Session.

Chap. 195.

An Act to Authorize the New-York and New-Haven Railroad Company to Extend Their Railroad from the Connecticut Line to the New-York and Harlem Railroad.

Passed May 11, 1846, by a Two-third Vote.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows:

Company Authorized to Extend Their Road to the N. Y. and Harlem Railroad.

§ 1. Permission and authority are hereby given to the New-York and New-Haven Railroad Company, chartered by the Legislature of the State of Connecticut, at the May session thereof; in the year of our Lord one thousand eight hundred and forty-four, for the purpose of constructing a railroad from New-Haven, in Connecticut, by the way of Bridgeport, in Connecticut, to the west line of the State of Connecticut towards the city of New-York, to continue and extend their railroad from the dividing line of the States of New-York and Connecticut, by such route as shall be established by said company, through the county of Westchester, to the New-York and Harlem Railroad Company's line of road in said county, and to unite or connect with said New-York and Harlem Railroad at or near Williams bridge in said county of Westchester; and to take, transport and convey persons and property upon the same, by the power and force of steam or animals, or any mechanical power or combination of the same. The route to be so established as aforesaid, shall be located in such manner as shall be approved by three commissioners who shall be appointed by the governor, and who shall have no interest in said company or in the location of the said route; and before approving of such route, the said commissioners shall afford a reasonable opportunity to all persons inter-

ested therein, to be heard in respect thereto; and such notice as the said commissioners shall direct, shall be given to all persons whose lands shall be required for the said route.

Real Estate May be Purchased.

§ 2. The said New-York and New-Haven Railroad Company is hereby authorized and empowered, to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the objects and intentions of this act; and may, by agents, surveyors and engineers, enter upon such route, place or places as may be
364 designated by the board of directors of said company, for the purpose of making surveys, and determine the line, course, road or way whereon to construct the said railroad or ways, paying all damages to the owner or occupant thereof. And it shall be lawful for the said company to enter upon and take possession of all such necessary and convenient real estate, as shall be voluntarily granted, with or without purchase, or of which the possession of the company shall be confirmed by virtue of the proceedings hereinafter prescribed. In case any disagreement shall occur between said company and the owner or owners of any such necessary or convenient real estate as aforesaid, in regard to the price to be paid by the said company for the same, the board of directors may present their petition to the chancellor of this State, or to the vice chancellor of the circuit wherein such land may be situated, setting forth the necessity of such lands for making their road or ways as aforesaid, the attempt and failure to purchase the same, with the name and residence of the owner or owners; and the chancellor or vice-chancellor shall direct such notice to the owner or owners of such lands as he shall deem proper, with the time and place of hearing the parties, and upon proof of due service of such notice, and upon hearing the parties or either of them, if the other after due notice shall not attend, the chancellor or vice-chancellor shall appoint three competent and disinterested freeholders of the county in which the lands are situated, to be commissioners to appraise said lands. The said commissioners shall appraise said lands, and shall award to the owners thereof what they shall deem to be the full value of the same, and assess the damages such owners may sustain by the taking

of their lands, by injury to buildings, fences or lands, and in the construction of such road, without any deduction on account of any real or supposed benefit or advantage which such owners of said land may derive from the construction of such road; and shall be authorized to examine the land, to administer oaths, and hear testimony, and shall make their appraisement in writing, without delay, under their hands, with a minute and accurate description of the lands appraised, with a map thereof, and shall report the same, with the testimony taken, to the court of chancery. The chancellor or vice-chancellor shall examine the report and shall hear the parties if desired and may increase or diminish the amount awarded if he shall be satisfied injustice has been done; upon proof to the chancellor or vice-chancellor, within thirty days after his determination of payment to the owner, or in cases where the owner shall, on a tender thereof, refuse to accept the same, or where such owner is an infant or a married woman, or an idiot or insane person, or a non-resident, of the depositing to the credit of
365 the owner, in such bank as the chancellor or vice-chancellor shall direct, of the amount of such appraisement, and the payment by the company of all expenses attending it, to be certified by the chancellor or such vice chancellor, if not agreed upon by the parties, the said chancellor or vice-chancellor shall make a decree or order particularly describing the lands, and reciting the appraisement and the mode of making it, and all other facts necessary to a compliance with this section of this act; and when the said decree or order shall be recorded in the office of the clerk of the county in which the land is situated, whose duty it shall be to record the same, the possession of said land shall be thereby confirmed to the said company, together with any legal and equitable right and title to the same, for the purpose herein before named: In case any married woman, infant, idiot or insane person, or non-resident, who shall not appear after such notice, shall be interested in any such land, the chancellor shall appoint some competent and disinterested person to appear before the said commissioners and act for and in behalf of such married woman, infant, idiot or insane person, and non-resident. This section shall not be so construed as to deprive any individual through whose land said road may run, of the right of crossing the same at suitable and con-

venient places for farming or other necessary purposes; nor to authorize the said corporation to take, except by agreement with the owner thereof, any timber, stone or other materials on any lands, except that on which the said railroad or way shall be constructed: the compensation of said appraisers shall be three dollars each, for every day they shall be actually employed.

Time Limited.

§ 3. If within two years from the passage of this act, said road shall not be commenced in said Westchester county, and twenty-five thousand dollars expended thereon, and if the same shall not be finished within three years, and put in operation, then this act shall be null and void.

Road May be Constructed.

§ 4. The said company is hereby authorized to construct a railroad with one or more tracks, of suitable width or dimensions, to be determined by the said company, on the course designated by the directors as aforesaid; and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect station houses and other necessary buildings for the accommodation of their concerns, and also to fix, regulate and receive, the charges by them to be received for the transportation of persons or property on the said road: Provided always, that such charges for the transportation of any passenger and his ordinary baggage, shall not exceed in the aggregate, the sum of three cents per mile, on that part of road within this State.

366 Crossing Roads and Streams.

§ 5. Whenever it shall be necessary for the construction of their said road, to intersect or cross any stream of water, or water courses, or any road or highway, it shall be lawful for the said company to construct their road across or upon the same; but the company shall restore the stream or water course, or road or highway, thus intersected, as near as may be to its former state, so as not unnecessarily to impair its usefulness, and in respect

to any road or highway, as may be satisfactory to the commissioners of highways of the town in which such road or highway may be intersected or crossed.

Fences to be Erected.

§ 6. The said company before running any cars upon the said railroad, shall erect and thereafter maintain upon the sides thereof, except where the said railroad shall intersect some public highway, a fence of such height and strength as is by law required as a division fence between the owners of adjoining lands; and shall also make and keep in repair wherever the same may be necessary upon the said railroad, suitable guards to prevent cattle from running upon the same.

Gates for Crossing Road May be Erected.

§ 7. The persons owning or occupying lands adjoining the said railroad, are hereby authorized at proper and convenient places, where they may have occasion to cross the said road, for farming and other necessary purposes, to erect suitable gates in the line of the said fence to facilitate such crossing, and to be kept in repair by the persons using the same.

Comp'y May be Sued.

§ 8. Said company shall be liable to be sued by summons in the same manner as corporations created by the laws of this State; and said summons, in case the same cannot be served on the officers of said company as now provided by law, may be served upon any agent of said company.

Iron Rails.

§ 9. The road authorized to be built by this act, shall be constructed with an iron rail weighing not less than fifty-six pounds to the yard.

Right to Repeal.

§ 10. The legislature may at any time alter or repeal this act.

367 RELATORS' EXHIBIT No. 6.

Witness Buckland.

Railroads.

Amending Charter of the New York and New Haven Railroad Company.

Passed 1846.

Whereas, the legislature of the state of New York, in senate and assembly convened, heretofore, on the eleventh day of May, one thousand eight hundred and forty-six, passed an act, entitled "An act to authorize the New York and New Haven Railroad Company to extend their said road from the Connecticut line to the New York and Harlem railroad," in substance and in the words following, to wit: "An act to authorize the New York and
368 New Haven Railroad Company to extend their railroad from the Connecticut line to the New York and Harlem railroad." Passed May 11, 1846, by a two-third vote.

The people of the state of New York, represented in senate and assembly, do enact as follows:

Sec. 1. Permission and authority are hereby given to the New York and New Haven Railroad Company, chartered by the legislature of the state of Connecticut, at the May session thereof, in the year of our Lord one thousand eight hundred and forty-four, for the purpose of constructing a railroad from New Haven, in Connecticut, by the way of Bridgeport, in Connecticut, to the west line of the state of Connecticut, towards the city of New York, to continue and extend their railroad from the dividing line of the states of New York and Connecticut, by such route as shall be established by said company, through the county of Westchester to the New York and Harlem Railroad Company's line of road in said county, and to unite or connect with said New York and Harlem railroad at or near Williams' Bridge, in said county of Westchester, and to take, transport and convey persons and property upon the same, by the power and force of steam or animals, or any mechanical power or combination of the same. The

route to be so established as aforesaid, shall be located in such manner as shall be approved by three commissioners, who shall be appointed by the governor, and who shall have no interest in said company or in the location of the said route; and before approving of such route, the said commissioners shall afford a reasonable opportunity to all persons interested therein to be heard in respect thereto; and such notice as the said commissioners shall direct shall be given to all persons whose lands shall be required for the said route.

Sec. 2. The said New York and New Haven Railroad Company is hereby authorized and empowered to purchase, receive and hold such real estate as may be necessary and convenient in accomplishing the objects and intentions of this act; and may by agents, surveyors and engineers, enter upon such route, place or places as may be designated by the board of directors of said company, for the purpose of making surveys and determining the line, course, road or way whereon to construct the said railroad or ways, paying all damages to the owner or occupant thereof. And it shall be lawful for the said company to enter upon and take possession of all such necessary and convenient real estate as shall be voluntarily granted, with or without purchase, or of which the possession of the company shall be confirmed by virtue of the proceedings herein after prescribed. In case any disagreement shall occur between said company and the owner or owners of any such necessary or convenient real estate as aforesaid, in regard to the price to be paid by the said company for the same, the board of directors may present their petition to the chancellor of this state or to the vice chancellor of the circuit wherein such land may be situated, setting forth the necessity of such lands for making their road or ways as aforesaid, the attempt and failure to purchase the same, with the name and residence of the owner or owners; and the chancellor or vice chancellor shall direct such notice to the owner or owners of such lands as he shall deem proper, with the time and place of hearing the
369 parties, and upon proof of the due service of such notice, and upon hearing the parties, or either of them, if the other, after due notice, shall not attend, the chancellor or vice chancellor shall appoint three competent and disinterested freeholders of the county in which the

lands are situated, to be commissioners to appraise said lands. The said commissioners shall appraise said lands, and shall award to the owners thereof what they shall deem to be the full value of the same, and assess the damages such owners may sustain by the taking of their lands, by injury to buildings, fences or lands, and in the construction of such road, without any deduction on account of any real or supposed benefit or advantage which such owners of said land may derive from the construction of such road; and shall be authorized to examine the land, to administer oaths and hear testimony, and shall make their appraisement in writing, without delay, under their hands, with a minute and accurate description of the lands appraised, with a map thereof, and shall report the same with the testimony taken to the court of chancery. The chancellor or vice chancellor shall examine the report, and shall hear the parties, if desired, and may increase or diminish the amount awarded, if he shall be satisfied injustice has been done. Upon proof to the chancellor or vice chancellor (within thirty days after his determination of payment to the owner, or in cases where the owner shall, on a tender thereof, refuse to accept the same, or where such owner is an infant, or a married woman, or an idiot, or insane person, or a non-resident) of the depositing to the credit of the owner in such bank as the chancellor or vice chancellor shall direct, of the amount of such appraisement and the payment by the company of all expenses attending it, to be certified by the chancellor or such vice chancellor, (if not agreed upon by the parties,) the said chancellor or vice chancellor shall make a decree or order, particularly describing the lands and reciting the appraisement, and the mode of making it, and all other facts necessary to a compliance with this section of this act. And when the said decree or order shall be recorded in the office of the clerk of the county in which the land is situated, (whose duty it shall be to record the same,) the possession of said land shall be thereby confirmed to the said company, together with any legal and equitable right and title to the same for the purpose herein before named. In case any married woman, infant, idiot or insane person or non-resident, who shall not appear after such notice, shall be interested in any such land, the chancellor shall appoint some competent and disinterested person to appear before the said commis-

sioners, and act for and in behalf of such married woman, infant, idiot or insane person or non-resident. This section shall not be so construed as to deprive any individual through whose land said road may run, of the right of crossing the same at suitable and convenient places for farming or other necessary purposes; nor to authorize the said corporation to take, except by agreement with the owner thereof, any timber, stone or other materials on any lands, except that on which the said railroad or way shall be constructed. The compensation of said appraisers shall be three dollars each for every day they shall be actually employed.

Sec. 3. If within two years from the passage of this act, said road shall not be commenced in said Westchester county, and twenty-five thousand dollars expended thereon, and if the same shall not be finished within three years and put in operation, then this act shall be null and void.

370 Sec. 4. The said company is hereby authorized to construct a railroad with one or more tracks of suitable width or dimensions, to be determined by the said company, on the course designated by the directors as aforesaid; and shall have power to regulate the time and manner in which goods and passengers shall be transported, taken and carried on the same, and shall have power to erect station houses and other necessary buildings for the accommodation of their concerns; and also to fix, regulate and receive the charges by them to be received for the transportation of persons or property on the said road. *Provided, always,* that such charges for the transportation of any passenger and his ordinary baggage shall not exceed in the aggregate, the sum of three cents per mile, on that part of said road within his state.

Sec. 5. Whenever it shall be necessary for the construction of their said road to intersect or cross any stream of water or water-courses, or any road or highway, it shall be lawful for the said company to construct their road across or upon the same; but the company shall restore the stream or water-course, or road or highway thus intersected, as near as may be to its former state, so as not unnecessarily to impair its usefulness; and in respect to any road or highway as may be satisfactory to the commissioners of highways of the town in which such road or highway may be intersected or crossed.

Sec. 6. The said company before running any cars upon the said railroad shall erect and thereafter maintain upon the sides thereof, (except where the said railroad shall intersect some public highway,) a fence of such height and strength as is by law required as a division fence between the owners of adjoining lands; and shall also make and keep in repair wherever the same may be necessary upon the said railroad, suitable guards to prevent cattle from running upon the same.

Sec. 7. The persons owning or occupying lands adjoining the said railroad are hereby authorized at proper and convenient places where they may have occasion to cross the said road for farming and other necessary purposes, to erect suitable gates in the line of the said fence, to facilitate such crossing, and to be kept in repair by persons using the same.

Sec. 8. Said company shall be liable to be sued by summons in the same manner as corporations created by the laws of this state; and said summons, in case the same cannot be served on the officers of said company as now provided by law, may be served upon any agent of said company.

Sec. 9. The road authorized to be built by this act shall be constructed with an iron rail, weighing not less than fifty-six pounds to the yard.

Sec. 10. The legislature may at any time alter or repeal this act.

Now, therefore—

Resolved by this Assembly, 1st. That the said act of the legislature of the state of New York, be and the same is hereby assented to and are confirmed; and the said New York and New Haven Railroad Company is hereby authorized to accept the grant therein made, and may exercise and enjoy all the rights, powers and privileges conferred thereby.

2d. That the time limited by the 16th section of the act incorporating the New York and New Haven Railroad Company for expending one hundred thousand dol-
371 lars upon their said road, is hereby extended for the period of two years; and the time therein limited for the completion of said road is hereby extended for the period of four years from and after the rising of this assembly.

372 RELATORS' EXHIBIT No. 7.

Witness Buckland.

The New York and Harlem Railroad Company with The New York and New Haven Railroad Company.

Agreement Dated March 17, 1848, *Together with the Awards Thereunder.*

373 Agreement.

This agreement and contract of transportation made and concluded this seventeenth day of March, in the year one thousand eight hundred and forty-eight between The New York and Harlaem Railroad Company of the one part and The New York and New Haven Railroad Company of the other part witnesseth as follows:

First. It is mutually understood and agreed that this agreement shall stand in the place and stead of a certain agreement heretofore made between the said parties bearing date the twenty-second day of January eighteen hundred and forty-six.

Second. It is mutually understood and agreed that the point of junction and connection of the railroads of the two companies at or near Williams' Bridge as now located one mile and sixty-two chains north of the present depot or station-house of the New York and Harlaem Railroad Company at Williams Bridge, be and the same is hereby confirmed, approved and adopted.

Third. It is mutually understood and agreed that the New York and New Haven Railroad Company shall on or before the eleventh day of May, eighteen hundred and forty-nine, construct and finish their said road from the point of junction aforesaid to Byram river.

Fourth. It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction to Byram river, they shall have the right to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over
374 the track or tracks of the road of the New York and Harlaem Railroad Company from the point of

junction aforesaid to and into the city of New York, and as far over the same in the said city as the said Company's road shall extend, not however below the intersection of said railroad and Pearl street in said city,—the said New York and New Haven Company furnishing their own haulage.

Fifth. It is mutually understood and agreed that in the arrangement of the trains of the two Companies preference shall be given to the through trains of the New York and New Haven Railroad Company over the way of freight trains to be run by the New York and Harlaem Railroad Company, and in like manner a preference shall be given to the through trains of the New York and Harlaem Railroad Company over the way and freight trains of the New York and New Haven Railroad Company and upon this principle the mode of running the trains of the two Companies shall be adjusted from time to time by the said Companies or such officers as they may respectively appoint or designate to make such arrangements for running their several trains, so as to ensure the greatest speed, accommodation and safety to passengers, etc.

Sixth. It is mutually understood and agreed that the New York and New Haven Railroad Company shall pay, in the manner hereinafter provided, and the New York and Harlem Railroad Company shall receive as full compensation for the use and occupation of their track or tracks as aforesaid, a certain sum for each passenger transported by the said New York and New Haven Railroad Company in their several trains, to be dependent upon and adjusted by the total number so transported daily according
375 to the following scale: For any number not exceeding one thousand (1,000) per diem at the rate of fourteen (14) cents each. For any number not exceeding twelve hundred and fifty (1,250) but over one thousand (1,000) per diem, at the rate of twelve (12) cents each. For any number not exceeding fifteen hundred (1,500) per diem but over twelve hundred and fifty (1,250), at the rate of ten (10) cents each. For any number not exceeding seventeen hundred and fifty (1,750) per diem but over fifteen hundred (1,500), at the rate of nine (9) cents each. For any number not exceeding two thousand (2,000) but over seventeen hundred and fifty (1,750) per diem, at the rate of eight and a half (8½) cents each. For any number

not exceeding twenty-five hundred (2,500) but over two thousand (2,000) per diem, at the rate of eight (8) cents each. For any number not exceeding three thousand (3,000) but over twenty-five hundred (2,500) per diem, at the rate of seven and a half (7½) cents each. For any number not exceeding thirty-five hundred (3,500) per diem but over three thousand (3,000), at the rate of seven (7) cents each. For any number not exceeding four thousand (4,000) per diem but over thirty-five hundred (3,500), at the rate of six and a half cents (6½) each. For any number exceeding four thousand (4,000) per diem, without farther limit, at the rate of six (6) cents each.

Seventh. It is mutually understood and agreed that the New York and New Haven Railroad Company shall and will make monthly payments in pursuance of the above covenant, calculated from the daily returns of the month for which payment is made.

Eighth. It is mutually understood and agreed that a system of commutation and the terms thereof and for running express engines, shall be adopted by the two
376 Companies as soon as they shall deem it judicious and necessary and may arrange the details of such system.

Ninth. It is mutually understood and agreed that an allowance shall be made and paid by the New York and New Haven Railroad Company to the New York and Harlem Railroad Company of such portion of the amount which they may actually receive for the transportation of mails, express trunks, crates and packages, and for goods, wares, produce and merchandise generally as shall hereafter be agreed upon, upon the following principle, that is to say, The New York and New Haven Railroad Company shall retain a fixed amount for the station expenses at the point from which the above business is received, and also that to which it is delivered, and in like manner, for the mail service, for the expenses of transportation to and from the several post-offices, and the railroad. They shall also retain a proper and adequate amount for the transportation or haulage to be done by them as aforesaid over the roads of the New York and Harlaem and New York and New Haven Railroad Company and the balance which may then remain, shall be apportioned ratably as to the distance

which may have been used of the roads of the two Companies respectively.

Tenth. The New York and Harlaem Railroad Company do further covenant to furnish to the New York and New Haven Railroad Company room for their engine and car-house at Thirty-third street and Forty-second street, in no event to exceed one-half the New York and Harlaem Company's real estate at those places at the rate the same cost the New York and Harlaem Company, being principal and interest upon the investment for that purpose to be decided upon by the New York and New Haven Railroad Company within thirty days after the said Company
377 is furnished with a statement of the cost of said properties respectively.

Eleventh. It is mutually understood and agreed that the New York and Harlaem Railroad Company shall without delay proceed to grade and construct a second line of rails or track with heavy H rails from the termination of their present double track to the aforesaid point of junction, which second track is to be made in a manner to be approved by the chief engineers of both roads and to be completed and ready for use on or before the completion of the road of the New York and New Haven Railroad Company from said point of junction to Byram river, now supposed to be on or about the first of October next, but it is further understood and agreed that the New York and New Haven Railroad Company shall and will upon the request of the New York and Harlaem Railroad Company loan and advance to them the sum necessary for the construction of the said second track by instalments as the work advances, or upon the execution of contracts for the same with responsible parties satisfactory to the New York and New Haven Railroad Company but this mode of payment shall be at their option, to be secured by the bonds of the said New York and Harlaem Railroad Company, payable five years after date bearing interest at the rate of seven per centum per annum payable half-yearly secured by the mortgage of said second track and appurtenances.

Twelfth. It is mutually understood and agreed that if the New York and Harlem Railroad Company shall by any unforeseen impediment be prevented from completing the new bridge over the Harlem River required for the construction of the said second track within the time limited in

the next preceding article of this agreement, the time
378 for completing the same shall be extended, without affecting the other stipulations of this agreement.

Thirteenth. It is mutually understood and agreed that the New York and Harlem Railroad Company shall keep its road from the aforesaid point of junction to the termination of the part thereof to be used by the New York and New Haven Railroad Company in good and sufficient repair to ensure the greatest speed, accommodation and safety to passengers.

Fourteenth. It is mutually understood and agreed that this agreement shall continue in force and be binding upon both Companies during the term of their charters respectively and for all renewals thereof but either party may terminate the covenants for compensation numbers, six, seven and eight and nine of this agreement upon any day after the expiration of three years from the commencement of the use of the road of the New York and Harlem Railroad Company by the New York and New Haven Railroad Company of which not less than twelve months notice shall have been given in writing to the other. But in that event it is mutually understood and agreed that the two companies shall and will forthwith on service of said notice proceed to arrange the terms of new covenants for the above purposes and if they cannot agree upon the terms of said new covenants then the matters or points in disagreement shall be submitted to arbitrators in the usual mode whose award shall be binding upon the parties and be embodied in the said new covenants for the ensuing five years and at the end of each succeeding five years new covenants in regard to compensation shall be made in like manner upon like notice being given by either party.

379 Additional Article. It is hereby understood and agreed that no fare shall be charged on the New York and New Haven Railroad below twenty-five cents from any point near the Harlem Railroad so as to interfere with the local fare of said Harlem Company, provided however that if the New York and Harlem Company shall reduce their present fare to Williams Bridge of twenty-five cents the New York and New Haven Company may also reduce *pro rata* below twenty-five cents—and that no way passengers shall be taken by the New Haven Company between Williams Bridge and the city of New York.

In witness whereof, the said New York and New Haven Railroad Company and the said New York and Harlem Railroad Company have caused this agreement to be duly executed in duplicate this seventeenth day of March in the year one thousand eight hundred and forty-eight, under their respective seals and attested by the signatures of their Presidents.

CHARLES PARSHALL, [SEAL.]
Prest. N. Y. & Harlem R. R. Co.
ROBERT SCHUYLER, [SEAL.]
Prest. New York and New Haven Railroad Company.

CITY AND COUNTY OF NEW YORK, *ss:*

On the fourth day of April one thousand eight hundred and forty-eight before me came Charles Parshall known to me to be the same individual who is the President of the within named corporation styled "The New York and Harlem Railroad Company" and being by me sworn he saith that he resides in the city of New York and is such President as aforesaid, that the seal first affixed to the within instrument is the corporate seal of the said
380 corporation and that it was so affixed thereto and said instrument executed and delivered by their authority; and on the same day before me also came Robert Schuyler known to me to be the same individual who is the President of the within named corporation styled "The New York and New Haven Railroad Company" and being by me sworn he saith that he resides in the city of New York and is such President as aforesaid, that the seal secondly affixed to the within instrument is the corporate seal of the said Company and that it was so affixed thereto and said instrument executed and delivered by their authority; all which is to me satisfactory evidence of its due execution.

D. HOBART,
Commr. of Deeds.

[A duly authenticated copy of the above agreement was filed in the office of the Secretary of State of the State of New York, December 7th, 1849.]

Award of 1856.

The undersigned, arbitrators to whom was submitted certain matters or points of disagreement between the New York and Harlem Railroad Co., and the New York and New Haven Railroad Co., in relation to the compensation to be received by the New York and Harlem Railroad Co. for the use of their tracks by the New York and New Haven Railroad Co. in accordance with a contract between the said Companies dated March the 17th, 1848, hereby make the following award.

The points of disagreement as referred to us being articles sixth, seventh, eighth and ninth of said con-
381 tract, we have agreed upon the following to be substituted for said articles of corresponding numbers, viz.—

Sixth. That the New York and New Haven Railroad Co. shall pay, and the New York and Harlem Railroad Co. shall receive, as full compensation for the use and occupation of their tracks, as provided in said contract, as follows, viz.:

For each full-priced passenger transported over their road by the New York and New Haven Railroad Co. the sum of ten cents (10c.) and for each commuting passenger so transported over their road the sum of three and one-third cents (3⅓c.).

Seventh. That on all freight, express matter, extra baggage, mails, &c., transported over the New York and Harlem Railroad as aforesaid by the New York and New Haven Railroad Co., sixty per cent. of the entire amount received by the said New Haven Railroad Co. for such transportation shall be retained by that Company in payment for their station, motive power, and other expenses and the remaining forty per cent. shall be divided between the two companies in proportion to the distances which the said freight, express matter, extra baggage, mails &c., shall have passed over their respective roads.

Eighth. That the compensation fixed in article sixth to be paid to the New York and Harlem Railroad Co. for the use of their tracks is predicated on the existing local tariff of rates for through passengers of the New York and New Haven Co., and if any change of said rates shall be made, then said compensation shall be proportionably advanced

or reduced as the case may be, but no reduction shall be made in said rates without the concurrence of the Presidents of said Companies, and in case of disagreement between them, the matter shall be referred to such
382 arbitor, or arbitors as they may select, who shall determine whether such proposed reduction is judicious and should be made.

Ninth. That the New York and New Haven Railroad Company shall make monthly payments in pursuance of the aforesaid contract, calculated from the daily business of the month for which payment is to be made, and each Company shall be responsible to the other for the acts, neglects, or defaults of it's own employees.—

Witness our hands this twenty-seventh day of June A. D. 1856.

J. EDGAR THOMPSON.
E. A. CHAPIN.
J. DUTTON STEELE.

Award of 1861.

The undersigned, arbitrators, to whom were submitted certain matters or points of disagreement between the New York and Harlem Railroad Company and New York and New Haven Railroad Company in relation to the compensation to be received by the New York and Harlem Railroad Company for the use of their tracks by the New York and New Haven Railroad Company in accordance with a contract between the said companies dated March 17th, 1848, hereby make the following award.

The points of disagreement, as referred to us, being articles sixth, seventh, eighth and ninth of said contract, we have agreed upon the following to be substituted for said articles, of corresponding numbers, viz:

383 Sixth. That the New York and New Haven Railroad Company shall pay, and the New York and Harlem Railroad Company shall receive, as full compensation for the use and occupation of their tracks, as provided in said contract, as follows, viz: For each full-priced passenger transported over their road by the New York and New Haven Railroad Company, the sum of (13) thirteen cents and for each commuting passenger so trans-

ported over their road, the sum of (4⅓) four and one-third cents.

Seventh. That on all freight, express matter, extra baggage, mails, &c., transported over the New York and Harlem Railroad, as aforesaid, by the New York and New Haven Railroad Company, for such transportation there shall be retained by that Company, in payment for their station, motive power and other expenses, (60-100) sixty per cent., of the entire amount received by the said New York and New Haven Railroad Company, and the remaining (40-100) forty per cent., shall be divided between the two companies in proportion to the distances said freight, express matter, extra baggage, mails, &c., shall have passed over their respective roads.

Eighth. That the compensation fixed in article sixth to be paid to the New York and Harlem Railroad Company for the use of their tracks, is predicated on the existing local tariff of rates for through passengers, of the New York and New Haven Railroad Company, and if any change of said rates shall be made, then said compensation shall be proportionably advanced or reduced, as the case may be; but no reduction shall be made in said rates without the concurrence of the Presidents of said Companies, and in case of disagreement between them, the matter
384 shall be referred to such arbitor or arbitors as they may select, who shall determine whether such proposed reduction is judicious and should be made.

Ninth. That the New York and New Haven Railroad Company shall make monthly payments in pursuance of the aforesaid contract, calculated from the daily business of the month for which payment is to be made; and each Company shall be responsible to the other for the acts, neglects or defaults of its own employees.

Witness our hands (in duplicate) this nineteenth day of January, A. D. 1861.

DAN. TYLER,
F. C. ARMS,
CHARLES MINOT,
Arbitrators.

385 RELATORS' EXHIBIT No. 8.

Witness Buckland.

Laws of New York, Seventy-first Session.

Chap. 143.

AN ACT *to Amend an Act Entitled "An Act Relating to the New York and Harlem Railroad Company" Passed May 7, 1840, and the Acts Amending the Same.*

Passed March 29, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Time Extended.

§ 1. The time limited by the act in relation to the New York and Harlem railroad company, passed May 11, 1846, for finishing and putting in operation not less than fifty miles of their railroad beyond White Plains, in the county of Westchester, is hereby extended from the first day of June, eighteen hundred and forty-eight, to the thirty-first day of December, eighteen hundred and forty-eight.

Capital Stock may be Incres'd.

§ 2. The capital stock of the New York and Harlem railroad company may be increased one million five
386 hundred thousand dollars, to be issued as a preferred stock, and bearing such rates of dividends payable out of the nett earnings of the road, as the board of directors may prescribe, to enable said company to pay their debts and complete their road to Dover Plains.

Subscriptions to Stock.

§ 3. The board of directors shall open books of subscription for the additional stock authorised by this act, and said books shall be kept open from time to time until the whole amount required shall have been subscribed, ten days

previous notice of the time and place of opening said books having been given in four of the daily newspapers printed in the city of New York.

Stockholders Who Shall Have a Right to Subscribe.

§ 4. The transfer books of said company shall be closed five days prior to the opening of said books of subscription, and the stockholders of the said company whose names shall then be standing on the stock books of said company, shall have the exclusive right of subscribing for such additional stock during the first three days from the opening of said books: and if more shall be subscribed for by such stockholders than the sum hereby authorised, the same shall be apportioned among the stockholders so subscribing according to the amount of stock then standing in the names of the said subscribers on the stock books of the company; and if the whole amount of such additional stock should not be subscribed by the stockholders of the company, the board of directors shall then be authorised to receive additional subscriptions from time to time from any other persons, until the whole amount of such additional stock shall be taken up.

Payments.

§ 5. The board of directors shall prescribe and announce with the proposal for such subscription, the time and manner in which the payments for such additional stock shall be made.

New York and N. Haven Company Authorised to Run Cars from Point of Junction.

§ 6. The New-York and New-Haven railroad company is hereby authorised to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business, over the road of the New-York and Harlem railroad company, from the point of junction of the roads of said companies at or near William's Bridge, in the county of Westchester, to the city of New York, and as far into the said city as the said Harlem railroad may extend, upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a copy

of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this state; and to take, transport and convey persons and property upon the said Harlem railroad, by the power and force of steam or animals or any mechanical power or combination of the same.

§ 7. This act shall take effect immediately.

387 RELATORS' EXHIBIT No. 9.

Witness Buckland.

At a Meeting of the Board of Directors of the New York and New Haven Rail Road Company, held at their office, in the City of New York, on Tuesday the Fifteenth day of February, 1848:

"The President presented a report with opinion of counsel in writing in reference to the contract between this and the New York and Harlaem Railroad Company for the connection of the two roads, stating that he had been informally informed by some of the officers of that company that they do not intend to fulfil that Contract; said report was read and ordered to be placed on file.

Whereupon,

On motion,

Resolved, That the President be requested to address the President of the New York and Harlaem Railroad Company requesting information officially in regard to the intentions of said Company, as to the fulfilment of said Contract.

Passed.

On motion,

Resolved, That the President be authorized in the name and behalf and under the seal of this company, to present to the Legislature of the State of New York a Memorial stating so much of the history of the negociations and contracts heretofore made and had between said companies in regard to the connection of their roads, as may be necessary to give full information in reference thereto, and praying for such Legislative sanctions to said contract, and such other Legislation in the premises as may be necessary to protect the rights of this Company.

Passed."

I, A. E. Clark, Secretary of The New York, New Haven and Hartford Railroad Company, do hereby certify that the foregoing is a true copy of record, and in testimony thereof I have hereunto set my hand, and affixed the seal of said Company this fifth day of February, 1931.

[Seal The New York, New Haven and Hartford Railroad Company.]

A. E. CLARK,
Secretary.

388 RELATORS' EXHIBIT No. 10.

Witness Buckland.

Tripartite Lease.

The New York and Harlem Railroad Company and The New York, New Haven and Hartford and The New York Central and Hudson River Railroad Companies.

November 1st, 1872.

New York:
Francis Hart & Co., Printers and Stationers, 12 & 14 College Place.
1873.

389 This Indenture, made the first day of November, in the year one thousand eight hundred and seventy-two, between The New York and Harlem Railroad Company, of the first part, The New York, New Haven and Hartford Railroad Company, of the second part, and The New York Central and Hudson River Railroad Company, of the third part, *witnesseth,* as follows:

Preamble.

Whereas, The trains of The New York, New Haven and Hartford Railroad Company enter the city of New York upon the track of The New York and Harlem Railroad Company, and a connection has been made whereby the trains of The New York Central and Hudson River Railroad Company also enter said city upon the track of The New York and Harlem Railroad Company, and that Com-

pany has for the purpose of affording increased depot and yard accommodations for its own passenger trains and business, and also for the passenger trains and business of the said two other Companies, thus coming upon its road, acquired the lands and constructed the depot and yard for storing cars hereinafter mentioned.

Preamble.

And, whereas, The New York and Harlem Railroad Company, for the more convenient transaction of business at said depot, and in consideration of the rents hereinafter reserved, has agreed with said two other Companies, respectively, for and during the terms hereinafter granted, to set apart certain portions of said depot for the passenger trains and business of said three Companies respectively, and also to devote other portions of said depot and said yard for the storing of cars to the use in common of said three Companies, in their passenger business, upon the terms and conditions, and subject to the covenants hereinafter set forth.

390

Now this Indenture further witnesseth, That,

Premises Demised to New York, New Haven and Hartford R. R. Co. Tracks. Diagram A.

Section I. The New York and Harlem Railroad Company, in consideration of the rents hereinafter reserved to be paid by The New York, New Haven and Hartford Railroad Company, and in consideration of the covenants on the part of that Company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease unto the last-named Company for and during the term of its charter, and all renewals thereof, including the charter of any Company which shall operate the present railroad of said Company party hereto, and of which the latter shall form a component part, for the accommodation of its passenger trains and business, the three tracks and grounds covered thereby in said depot, lying easterly of the centre or wide platform, and designated on the diagram hereto annexed, marked A, by numbers eight (8), nine (9) and ten (10).

Platform.

Section II. Also the use, in common with The New York and Harlem Railroad Company, of the platform lying on the westerly side of said three tracks for the accommodation of passengers and their baggage.

Platform. Regulations to be Made by Depot Master.

Section III. And also the use, for like purposes, in common with The New York and Harlem Railroad Company, and The New York Central and Hudson River Railroad Company, of the platform lying next on the easterly side of said three tracks, and also the wide platform north of and adjoining the passenger and baggage rooms of said party of the second part; subject, however, to the regulations and directions as to the use of said tracks and platforms, which may be, from time to time, made and given by the Depot Master herein mentioned.

Tracks to be Used Jointly. Diagram A.

Section IV. Also, the right, in common with The New York and Harlem and New York Central and Hudson River Railroad Companies, to use the three most
391 *easterly* tracks, and the platforms adjoining the same in said depot (excepting that part of said tracks which is reserved for the exclusive use of the City cars of The New York and Harlem Railroad Company), and which are designated on the diagram A, hereto annexed, by the numbers eleven (11), twelve (12) and thirteen (13), for the receipt and accommodation, under the direction of said Depot Master, of all its passenger trains arriving at said depot, and for the discharge of all its passengers, baggage, express and mail matter, as hereinafter provided.

Right of Ingress and Egress, N. Y., N. H. and H. R. R. Co.

Section V. Also, the right of ingress to, and egress from, said demised portions of said depot for all its passenger trains, under the direction of said Depot Master, over the tracks northerly of said depot leading to the main tracks

of The New York and Harlem Railroad Company in Fourth avenue, and to the yard for the storage of cars.

The Use of Yard for Storage of Cars, N. Y., N. H. and H. R. R. Co.

Section VI. Also, the right, in common with The New York and Harlem, and The New York Central and Hudson River Railroad Companies, and under the direction of said Depot Master, to the use of the said yard for the storage of cars, which said yard is bounded and described as follows:

Description of Yard.

First. The block bounded northerly by Forty-sixth street, easterly by Fourth avenue, southerly by Forty-fifth street, and westerly by Madison avenue.

Description of Yard.

Second. The block bounded northerly by East Forty-seventh street, easterly by Fourth avenue, southerly by East Forty-sixth street, and westerly by Madison avenue.

Description of Yard.

Third. Commencing at the south-east corner of East Forty-eighth street and Madison avenue, running thence easterly along the southerly side of said East Forty-eighth street to the Fourth avenue, thence southerly, along the westerly side of Fourth avenue, two hundred (200) feet ten (10) inches, to East Forty-seventh street, thence westerly along the northerly side of East Forty-seventh street two hundred and fifty (250) feet, thence northerly and parallel with Fourth avenue one hundred (100) feet five (5) inches, thence westerly and parallel with East Forty-
seventh street fifty (50) feet, thence southerly and
392 parallel with Fourth avenue twenty-five (25) feet,
thence westerly and parallel with East Forty-seventh street, one hundred feet to Madison avenue, and thence northerly along the easterly line of Madison avenue one hundred and twenty-five (125) feet five (5) inches to point or place of beginning.

Description of Yard.

Fourth. Beginning at the north-west corner of East Forty-eighth street and Fourth avenue, thence running along the westerly line of Fourth avenue one hundred (100) feet five (5) inches, thence westerly and parallel with East Forty-eighth street one hundred (100) feet, thence southerly and parallel with said Fourth avenue one hundred (100) feet five (5) inches, to East Forty-eighth street, and thence easterly along the northerly line of East Forty-eighth street one hundred (100) feet to point or place of beginning.

Diagram D. Limitation of Use of Premises.

All of which property is more particularly shown on diagram hereto annexed, marked D, and colored *pink*, and is not to be used by any or either of the parties hereto for any purpose other than the storage of cars used on passenger trains and the cleansing and ventilating of such cars, their bedding, cushions and furniture, and doing such work as may be necessary to keep such cars in proper condition for daily use, without the written consent of said three Companies.

Use of Baggage Room and Cellar, N. Y., N. H. and H. R. R. Co.

Section VII. And also, the right, in common with said New York and Harlem, and New York Central and Hudson River Railroad Companies, and subject to the stipulations hereinafter contained, to the use of the baggage-room and cellar thereunder on the easterly side of said depot, as a place for the deposit of baggage brought by its passenger trains arriving at said depot.

Rooms Demised, N. Y., N. H. and H. R. R. Co. Diagram A.

Section VIII. Also the rooms on the first or ground floor of the southerly end of said depot extending on Forty-second street, from the west side of the archway to the new street (between Madison and Fourth avenues) on the westerly side of the depot, excepting the hall-way desig-

nated on diagram hereto annexed and marked A,
393 and numbered twelve (12), which is to be and remain for the use of said second party as a means of communication with its offices, and also for the joint use of the parties hereto for the egress of passengers from all passenger trains arriving in said depot.

Diagram B.

Section IX. Also the rooms on the second floor, extending on Forty-second street from Fourth avenue to the easterly line of room designated on diagram B, hereto annexed, as number ten (10).

Diagram C. Limitation of Use of Rooms.

Section X. Also the rooms on the third floor, extending on Forty-second street from Fourth avenue to the easterly line of the tower on the north-east corner of Forty-second street and the new street, and designated on diagram hereto annexed marked C, as number one (1); and also all rooms contained in the central tower on Forty-second street and the tower at the north-west corner of Forty-second street and Fourth avenue; and also the basements and vaults on Forty-second street east of the *the* east wall of the tower at the south-west corner of said depot. All said rooms and premises herein demised to be used for the reception and accommodation of the passengers and their baggage; package, newspaper, telegraph, and the ticket and business offices of said New York, New Haven and Hartford Railroad Company, and for no other purposes.

Demise to N. Y. C. and H. R. R. R. Co. Tracks. Platform. Waiting Rooms. Platform. Regulations to be Made by Depot Master.

Section XI. And this agreement further witnesseth, that The New York and Harlem Railroad Company, in consideration of the rents hereinafter reserved to be paid by The New York Central and Hudson River Railroad Company, and in consideration of the covenants on the part of that Company hereinafter contained, hath demised, let, and leased, and by these presents doth demise, let, and lease unto the last named Company, for and during the term of

its charter, and all renewals thereof, including the charter of any Company which shall operate the present railroad of said Company party hereto, and of which the latter shall form a component part, for the accommodation of its
394 passenger trains and business, the four most westerly tracks of said depot and the grounds covered thereby (including the track into the baggage room appropriated to said last named Company). Also the westerly platform (excepting that portion of the same immediately in front of the waiting rooms of The New York and Harlem Railroad Company, and which is hereby reserved for the joint use of The New York and Harlem and The New York Central and Hudson River Railroad Companies); and also the platform lying between the two most easterly of said four tracks for the accommodation of passengers and their baggage. Subject, however, to the regulations and directions as to the use of said tracks and platforms which may be from time to time made and given by the Depot Master hereinafter mentioned.

N. Y. C. and H. R. Use Jointly with the Other Parties. Platform. Tracks. Diagram A.

Section XII. Also the right, in common with The New York and Harlem, and The New York, New Haven and Hartford Railroad Companies, to use the wide platform north of, and adjoining the passenger and baggage rooms of said party of the second part; and also the three most easterly tracks in said depot, and the platforms adjoining the same (excepting that part of said tracks which is reserved for the exclusive use of the City cars of The New York and Harlem Railroad Company), and which are designated on the diagram A hereto annexed, by the numbers eleven (11), twelve (12), and thirteen (13), for the receipt and accommodation, under the direction of said Depot Master, of passenger trains arriving at said depot, and for the discharge of all their passengers and baggage, express and mail matter.

Ingress to and Egress from Depot and Yard for the Storage of cars for Passenger Trains.

Section XIII. Also the right of ingress to and egress from said demised portions of said depot for all its pas-

senger trains, under the direction of the said Depot Master, over the tracks northerly of said depot leading to the main tracks of The New York and Harlem Railroad Company in Fourth avenue, and to the yard for the storage of cars.

N. Y. C. and H. R. Use Jointly with the Other Parties. Yard for Storage of Cars and Limitation as to Use. Baggage Room and Cellar.

395 Section XIV. Also the right to the use, in common with The New York and Harlem, and The New York, New Haven and Hartford Railroad Companies, and under the direction of said Depot Master, of the said yard for the storage of cars; which said yard is not to be used by either of the parties hereto for any purpose other than the storage of cars used on passenger trains, and the cleansing and ventilating of such cars, their bedding, cushions and furniture, and doing such work as may be necessary to keep such cars in proper condition for daily use. And also the right, in common with the two last named Companies, and subject to the stipulations hereinafter contained, to the use of the baggage room and cellar thereunder, on the easterly side of said depot, as a place for the deposit of baggage brought by passenger trains arriving at said depot.

Rooms. Diagram A. Rooms. Diagram B. Rooms. Diagram C. Limitation as to Use of Rooms.

Section XV. Also the rooms on the ground floor on the westerly side of said depot, on the diagram hereto annexed marked A, extending from Forty-fifth street southerly, to a line marked "division line between New York and Harlem, and New York Central and Hudson River Railroad Companies," together with the cellar under the baggage room. Also the rooms on the second floor on the westerly side of said depot, on diagram hereto annexed marked B, extending from Forty-fifth street southerly, to a line marked "division line between New York and Harlem, and New York Central and Hudson River Railroad Companies"; also the rooms on the third and intermediate story, and all rooms above on the westerly side of said depot, on diagram hereto annexed marked C, extending

from Forty-fifth street southerly, to a line marked "division line between New York and Harlem, and New York Central and Hudson River Railroad Companies." All of said rooms and premises herein demised, to be used for the reception and accommodation of the passengers and their baggage, and the ticket, package, newspaper, telegraph and business offices of said New York Central and Hudson River Railroad Company, and for no other purpose.

396 Reservation by N. Y. & Harlem. Covenant of N. Y. & Harlem as to Use of Reserved Premises.

Section XVI. The New York and Harlem Railroad Company reserves for itself all the tracks, platforms, rooms, and other parts of said depot, and yard for the storage of cars, and the accommodations therein not hereby demised. All the aforesaid premises so reserved by the said New York and Harlem Railroad Company, are to be used for its passenger trains, and business coming over The New York and Harlem Railroad, or any part thereof, including the City lines; and it covenants with the other parties hereto, respectively, not to apply the portions or accommodations so reserved, or to permit them to be applied, to any other but similar purposes to those to which the two Companies lessees are hereby permitted to apply the corresponding portions of said depot and accommodations demised to them, respectively, without the written consent of the said two other Companies. And it is further agreed, that in case the said New York and Harlem Railroad Company shall use any portions of the platforms, tracks and depot, in addition to the portions herein exclusively devoted to the use of the City cars, for the purposes of such City cars, then, and in that case, The New York and Harlem Railroad Company shall use such portions for the accommodation of the City cars in such manner as not to obstruct the other two Companies parties hereto, in the enjoyment of the portions of the premises hereby secured to them.

Necessity for Regulating Use of Premises.

Section XVII. And whereas, it is essential for the purpose of avoiding confusion in the handling of trains and cars at said depot and yard, and in the transaction of the

business there to be done, that the said depot and yard for the storage of cars should be under the charge of a responsible person, whose duty it shall be to regulate the entrance and exit of trains and the storage of cars, to preserve order and regularity in the management of said depot, and to see that each of the three Companies entitled to use the same receive the accommodations to which it is entitled, without favor or partiality.

397 General Agreement as to Depot Master.

It is mutually agreed by and between the three Companies parties to these presents, that the said depot and yard, and the management of trains on the approaches thereto from the junction of The Spuyten Duyvil and Port Morris Railroad with The New York and Harlem Railroad, including the electric signals, telegraph and other apparatus for regulating such trains, shall, at all times during the terms hereby granted, be under the sole charge and direction, as hereinafter specified, of a Depot Master.

His Powers and Duties.

It shall be the duty of said Depot Master to regulate the entrance of all trains into said depot and their exit therefrom, so as to avoid collision, interference and unnecessary detention of the trains of either of said Companies; to direct all switchings, and to furnish and have charge of all switches and necessary switching power; to make up all outgoing trains; to direct the removal of trains from said depot after they have discharged their passengers; to locate them in the said yard for the storage of cars in such manner as he shall deem most convenient for all the parties hereto; to preserve order in said depot and said yard and the approaches thereto, and to give all directions which may be necessary to facilitate the transaction of the business there to be done; to direct as to the lighting, heating and cleaning of the car room in said depot and of the said yard for the storage of cars; and, generally, to have the charge, management and regulation of the exterior and interior of said depot and said yard and the approaches thereto, excepting the baggage rooms and the rooms exclusively occupied or held by said Companies respectively in said depot building; to employ such other persons or force under him as may

be necessary or proper to the due discharge of the duties hereby devolved upon him; but it is expressly agreed that, under no circumstances, shall said Depot Master allow any steam or locomotive engine to be admitted into said depot.

Employees to Conform to His Regulations.

Section XVIII. And it is severally covenanted and agreed that the servants and employees of each of said three
398 Companies will, at all times, promptly obey all lawful orders of the said Depot Master, and conform to all regulations lawfully made by him in regard to the matters committed to his charge.

Discretionary Power as to Use of Tracks by Incoming Trains.

Section XIX. It is further covenanted and agreed in manner aforesaid for the purpose of avoiding the detention of any of the trains of either of the said three Companies arriving at or approaching said depot, that if at the time of the arrival of any such train the three tracks hereinbefore devoted to the accommodation of incoming trains should be occupied or obstructed so as not immediately to admit the train so arriving, such Depot Master may, in his discretion, direct such train to enter upon any other track in said depot which shall be at the time unoccupied, and there to discharge its passengers and their baggage.

When Trains to be Removed from Depot and Placed in Yard.

Section XX. It is further severally covenanted and agreed that, as soon as any train of either of said three Companies arriving at said depot shall have discharged its passengers and their baggage, such train shall forthwith be removed from said depot under the direction of said Depot Master, and placed in such part of the yard for the storage of cars, or upon such track or tracks in said depot as are hereby devoted to the use of the Company to which such train belongs, as he shall direct.

Use of Joint Accommodations.

It is mutually agreed by and between the parties to these presents, that in respect to those parts of said depot which are, by the provisions of this indenture, appropriated to

the use of said parties in common, that they shall be managed and used, as far as practicable, in such manner that each of said parties may be accommodated therein to the full extent of the requirements of the business which such party is entitled to carry on in said depot, and that whenever required by it for use, each party shall be entitled, under the direction of the Depot Master, to at least a proportion of such accommodations corresponding with the proportion of taxes and general depot expenses which such party has herein agreed to bear; but each of said
399 three Companies is to be entitled to one-third of the accommodations in said yard for the storage of cars.

As to Loading Express and Mail Matter, N. Y., N. H. and H. As to Loading Baggage.

Section XXI. And The New York, New Haven and Hartford Railroad Company covenants and agrees with The New York and Harlem Railroad Company that all express and mail matter to be laden on the outgoing passenger trains of The New York, New Haven and Hartford Railroad Company, unless laden outside the depot, shall be brought into said depot through the entrances fronting on Fourth avenue northerly of the baggage room, and that the outgoing express and mail cars may be brought upon the most easterly track of said depot, so to be laden; and for that purpose said party of the second part shall have the precedence in the use of said easterly track over the incoming trains of the three Companies, and that all outgoing baggage for such trains shall be brought into said depot through the baggage room leased to the last named Company and laden upon the tracks leased to it, the provisions of this section to be subject, however, to variation by said Depot Master as convenience may require.

Depot Master to Regulate Unloading of Express Matter in Depot.

Section XXII. It is mutually agreed between the parties hereto that no express matter shall be discharged on any of the platforms in said depot, except light express matter arriving in the regular baggage cars attached to the passenger trains, and that the Depot Master shall have power to

determine what express matter shall be so discharged, and the time, place and manner of discharging the same, and also the mails arriving by said trains, so as not to obstruct or cause delay to the trains or passengers of either of the Companies, or to interfere with the delivery of baggage.

As to Loading Express and Mail Matter and Baggage, N. Y. C. and H. R.

Section XXIII. And The New York Central and Hudson River Railroad Company covenants and agrees with The New York and Harlem Railroad Company that all express and mail matter, and all baggage to be laden on the outgoing passenger trains of The New York Central and Hudson River Railroad Company, unless laden outside of the depot, shall be brought into said depot through the entrances fronting on the new street, on the westerly side of said depot, on the premises demised to the last named Company, and laden on the tracks demised to that Company.

Same as to N. Y. & Harlem.

Section XXIV. And it is agreed that all express and mail matter to be laden on the outgoing passenger trains of The New York and Harlem Railroad Company, unless laden outside of the depot, shall be brought into said depot through the entrances fronting on Fourth Avenue, northerly of the baggage room, and that the outgoing express and mail cars may be brought upon the most easterly track of said depot, so to be laden, and for that purpose said party of the first part shall have the precedence in the use of said easterly track over the incoming trains of the three Companies, and that all the outgoing baggage for such trains of said Company shall be brought into said depot through the baggage rooms reserved by it and laden upon the tracks reserved by it; the provisions of this section to be subject, however, to variation by said Depot Master as convenience may require.

Depot Master to Regulate Admission of Certain Vehicles Into Depot. And Also Handling Freight Therein.

Section XXV. And the parties hereto severally covenant and agree that they will not, excepting upon emergency, and with the consent and under the direction of the Depot

Master, cause or allow any express or mail wagons, carts or other wagons, carriages, or vehicles of similar character, to be brought into said depot; and that they shall, under no circumstances, use the said depot for the transaction of freight business, or lade or unlade any freight therein other than the baggage of passengers, the mails and such express matter as is hereinbefore specified; and that all baggage shall be unloaded from the cars of the respective Companies under the direction of the Depot Master, expeditiously and without delay, and in such manner as not to obstruct the tracks.

Baggage Master. How Appointed. To be Responsible for Baggage. Each Party to Fix Its Rates for Storage. Collections, How Disposed of.

Section XXVI. And it is further covenanted and agreed in manner aforesaid that the baggage room and cellar thereunder on the easterly side of said depot shall be
401 placed under the exclusive charge and control of a Baggage Master, to be appointed in the same manner as said Depot Master, and subject to removal in the same way, who shall give such security as the parties hereto shall require, and who shall represent each of said Companies in respect to the care of baggage arriving by its trains; and shall undertake to be personally responsible, and to hold each of said Companies harmless against all claims from loss of or damage to baggage after its arrival at said depot and until it shall have left the same; and that no person shall be admitted to said baggage room except by direction or consent of said Baggage Master or his agents; and that neither of the parties hereto is to be charged with the care of said baggage room or its contents, or to be responsible in case any person improperly obtains admittance thereto; and that each of said Companies shall have the right to fix its own rates for the storage of baggage coming into said baggage room from its own trains. And said Baggage Master shall collect and pay over to the Treasurer of The New York and Harlem Railroad Company all moneys accruing on account of such storage, to be by said Treasurer credited to the joint account of the three Companies.

Depot Master, Appointment and Removal.

Section XXVII. It is mutually agreed that the Depot Master hereinbefore mentioned shall be appointed annually by the unanimous consent, in writing, of the Presidents or Vice-Presidents of the said three Companies, and shall be removable at any time by the written order of the President or Vice-President of either of said Companies. And in case of such removal, or of a vacancy in the office of Depot Master arising by death, disability, resignation or otherwise, another shall forthwith be appointed by the mutual consent of the Presidents or Vice-Presidents of the three Companies for the term of one year, subject to removal in the manner hereinbefore prescribed. And in case the said parties shall be unable to agree, then, and in that case, such Depot Master shall be appointed by the Governor of the State of New York, and such appointee
402 shall hold office until his successor shall be agreed upon by the three Companies in manner before mentioned, subject, however, to the right of either of said parties to remove such appointee in the same manner as if he had been appointed by said Companies, provided, however, that no removal of any Depot Master by either of the parties hereto under this section shall take effect until the time specified in a written notice of such removal to be given to each of the other parties hereto, and which time shall be not less than ten days nor more than fifteen days from the service of such notice.

Depot Master to Make Certain Repairs to Premises. Expense Thereof, how Borne.

Section XXVIII. It is further mutually agreed between the several parties hereto that all necessary and proper repairs upon the exterior or interior of any part of said depot, and upon the yard for the storage of cars, and the structures thereon erected or to be erected, and the tracks south of Fifty-second street and north of Forty-second street, leading to the said depot and yard for the storage of cars (except the two main tracks on the Fourth avenue), and upon the electric signal, telegraph and other apparatus for regulating trains below the Harlem River, and upon all buildings and sheds now erected or in process

of erection in said yard for the storage of cars, and upon all other structures which may hereafter be erected thereon, by and with the written consent of said three Companies, excepting, however, the interior of the rooms and offices occupied exclusively by said Companies, respectively, and also all expenditures for men, material, supplies and equipments necessary to be made for the benefit of the parties hereto in conducting the business in the said depot and yard for the storage of cars, shall be made by and under the direction of the said Depot Master, and that the expense thereof shall be borne by the several parties hereto in the proportions hereinafter mentioned; and that statements of the work so done, and the cost thereof, and the expenditures so incurred, shall be furnished by said Depot Master to the treasurer of each of said Companies monthly.

403 Yearly Rent, N. Y., N. H. and H. Amount. Quarterly. Percentage of Aggregate Cost of Premises.

Section XXIX. The New York, New Haven and Hartford Railroad Company, in consideration of the premises, covenants and agrees with The New York and Harlem Railroad Company to pay to it for the premises and privileges hereby demised to The New York, New Haven and Hartford Railroad Company, a yearly rent of — dollars, payable in equal quarter yearly payments on the first days of February, May, August and November, in each year during the term of this lease, which sum is the interest on — per cent. of the sum of — dollars, which is the aggregate cost of the premises and property demised hereby.

Yearly Rent, N. Y. C. & H. R.. Amount. Quarterly. Percentage of Aggregate Cost of Premises.

Section XXX. The New York Central and Hudson River Railroad Company, in consideration of the premises, covenants and agrees with The New York and Harlem Railroad Company to pay to it for the premises and privileges hereby demised to the said New York Central and Hudson River Railroad Company a yearly rent of — dollars, payable in equal quarter yearly payments on the first days of February, May, August and November, in each year dur-

ing said term, which said sum is the interest on — per cent. of the sum of — dollars, being the aggregate cost of the said premises and property hereby demised.

Certain Expenses of Depot, &c., to be Additional to Rent. Proportion to be Borne by Each Party.

Section XXXI. And it is further mutually agreed by and between the three Companies parties to these presents, that the following payments and expenses in addition to said rent connected with said depot and yard for the storage of cars shall, during the term of this lease, be borne and paid by the said three Companies in the proportion of — per cent. by The New York and Harlem Railroad Company, — per cent. by The New York, New Haven and Hartford Railroad Company, and — per cent. by The New York Central and Hudson River Railroad Company, viz:

Taxes. Croton Water Rents.

First. All taxes and assessments, ordinary and extraordinary, which may at any time during the term
404 hereby granted be assessed or imposed upon said depot and yard for the storage of cars, or the land on which they are situated, or the buildings or improvements thereon, or any part of either under the authority of any law of the State of New York, or of the United States of America now existing, or which may hereafter be enacted, including all Croton water rents or sums which may be payable for the use of Croton water in said depot and yard for the storage of cars; provided, however, that no outlays or expenses incurred or to be incurred by The New York and Harlem Railroad Company in perfecting or securing its title to any part of the premises hereby leased, shall be borne by said New York, New Haven and Hartford Railroad Company.

Interest on Value of Certain Improvements.

Second. Interest at the rate of seven per cent. per annum upon all permanent improvements which may be hereafter made or erected by the party of the first part, in and upon said yard for the storage of cars, or any part thereof, or upon said car house or depot, for the benefit

and with the written consent of the three Companies using the same.

Certain Expenses to be Borne Equally.

And it is further mutually agreed by and between the three Companies parties to these presents, that the following payments and expenses connected with said depot and yard for the storage of cars shall, during the term of this lease, be borne and paid by the said three Companies equally, viz:

Repairs.

First. The cost of all necessary and proper repairs made by and under the direction of the Depot Master, between Forty-second and Fifty-second streets, as herein provided.

Rebuilding.

Second. The cost and expense of repairing or re-building any part of the depot, or any of the structures hereinbefore mentioned, which may be injured or destroyed by act of God, fire, civil commotion, violence, or casualty.

Compensation of Depot Master and His Employees.

Third. The compensation agreed by the parties hereto to be paid to the Depot Master and his employees, and to the Baggage Master and his employees, and also all expenditures incurred by them in the discharge of their duties, between Forty-second and Fifty-second streets, as is herein provided.

405 Lighting, Heating and Cleaning.

Fourth. The expense of lighting, heating, and cleansing the large car room in said depot, and the passages leading thereto; and the said yard for the storage of cars, and the buildings which may be erected thereon; and also of heating, by steam, the offices, baggage rooms, and other rooms occupied by said three Companies respectively.

Each Party to Repair the Rooms Occupied Exclusively.

Section XXXII. It is hereby mutually agreed, that each of said three Companies will keep in repair the rooms and offices occupied exclusively by it. And further, that in

case any damage shall be done to any part of said depot and yard for the storage of cars, or the structures thereon, or the approaches thereto, through the negligence of either of the Companies, its servants or agents, such Company shall bear the whole expense of repairing such damages.

Lessees' Covenants as to Paying Taxes and Other Items. Proviso.

Section XXXIII. And each of the said two Companies, lessees, hereby covenants, to and with The New York and Harlem Railroad Company, that such Company, lessee, will, on demand, in addition to said rents, pay its proportion, hereinbefore declared, of the taxes, assessments, and Croton water rents, and dues hereinbefore mentioned, unto The New York and Harlem Railroad Company as soon as the same, or any part thereof, shall be paid to the proper authorities; and that it will not contest or dispute the regularity or validity of any such tax or assessment which The New York and Harlem Railroad Company shall pay. Provided, that before making any such payment, said New York and Harlem Railroad Company shall give to said other two Companies reasonable notice of such tax or assessment before paying the same, and shall, upon the written request of either of said two other Companies, contest the regularity or validity of any such tax or assessment, at the joint expense of the three parties hereto, in the proportion aforesaid. But such taxes or assessments so required to be contested, may be paid by The New York and Harlem Railroad Company under duress and protest, if it shall deem that course necessary, and it shall be entitled to reimbursement from the other Companies of their respective proportions thereof, as hereinbefore provided.

406 Proviso.

But The New York and Harlem Railroad Company shall, on the written request of either of said two other Companies, take legal proceedings to recover back the amounts so paid; and all expenses incurred by it, or to which it may be subjected in consequence of such proceedings, shall be borne by the three parties hereto in the proportions aforesaid; and all moneys refunded or recovered back, shall belong to said parties respectively, in the proportions aforesaid.

Lessees' Covenant not to Assign or Underlet. For What Purpose Demised Premises are to be Used. For What Purpose Premises Reserved by New York and Harlem are to be Used.

And each of the said Companies, lessees, hereby covenants with The New York and Harlem Railroad Company its successors and assigns, not to assign this lease, or any interest therein, or in any part of the premises or privileges hereby demised, or to underlet the same or any part thereof, without the previous written consent of The New York and Harlem Railroad Company, and also not to use or occupy any part of the demised premises or privileges, or permit the same to be used or occupied, for any purposes other than those for which the same are hereby stated to be demised; and The New York and Harlem Railroad Company, during the continuance of this lease, covenants with the two other Companies aforesaid, that the portions of said depot and yard for the storage of cars, and accommodations reserved by it, shall not be used, during the term hereby granted, for any other purposes than those for which they are hereinbefore stated to be reserved.

Use of Undemised Premises by New York and Harlem to be Subject to Regulations of Depot and Baggage Master.

Section XXXIV. It is hereby further mutually covenanted and agreed by said New York and Harlem Railroad Company, that in the use by it of the portions of said depot and yard for the storage of cars not hereby demised, said Company shall be and remain subject to the regulations and directions of said Depot Master, and said Baggage Master, in the same manner, and to the same extent in all respects, as said other two Companies are, by the terms of this Indenture hereinbefore stated.

Proviso as to Non-payment of Rent. Lease to Become Void at Option of N. Y. & Harlem. Covenants to Leave and Surrender on Termination of Lease. Condition of Premises When Surrendered.

Section XXXV. Provided, always, and these presents are upon the express condition, that if either of the said Companies, lessees, shall at any time during the term
407 of this lease make default and continue therein for a period of thirty days after demand thereof in writ-

ing, in the payment of the yearly rent hereinbefore reserved to be paid by it or any part thereof when due, then, and in every such case, and although no advantage may have been taken of previous defaults, these presents and the term hereby granted shall, as to such defaulting Company, cease and become void at the option of The New York and Harlem Railroad Company, its successors or assigns; and it shall be lawful for it or them into and upon the premises hereby demised to such defaulting Company, or into any part thereof, in the name of the whole, to re-enter and the same to have again, re-possess and enjoy as in their first and former estate, anything hereinbefore contained to the contrary thereof in any wise notwithstanding, and each of the said Companies, lessees, hereby further covenants to and with The New York and Harlem Railroad Company its successors and assigns, that on the expiration or sooner termination of the term hereby granted, such Company will quietly leave, surrender and yield up the premises and privileges hereby demised to it, with the appurtenances, unto The New York and Harlem Railroad Company, its successors and assigns, and that the portions of said premises appropriated to either of said two Companies exclusively shall be delivered up in as good plight and condition as reasonable use and wear will permit.

Option to Lessees to Terminate Lease if Deprived of Use of Demised Premises. Proviso as to Notice. Time When Notice Shall Take Effect.

Section XXXVI. It is further mutually agreed between the parties hereto, that in case either of the parties of the second and third parts hereto shall be deprived of the use of the said depot and prevented from using it for the purposes herein mentioned by Legislative or Municipal interference and against its will, or by being prevented from running their trains by steam to Forty-ninth street, or by any failure of the title of said party of the first part to the premises hereby leased, then, and in that case, this lease shall, at the option of such party of the second or third part, cease and be determined. Provided that such
408 option be exercised and notice thereof given to the other parties hereto, within sixty days after such party shall have been deprived of the use of such depot, or

shall have been in manner aforesaid prevented from running their trains by steam, in which case the interest of said party so exercising said option shall cease and determine at the time in said notice specified, which shall not be less than one year from the time of giving such notice, unless within that time the obstruction to such use shall have been removed, in which case said notice of option shall be deemed to have been withdrawn.

Business of or for Lines Competing with Parties Hereto not to be Transacted in Depot or Offices.

Section XXXVII. It is further mutually agreed between the several parties hereto, and they respectively covenant, each with the others, that no part of said depot building shall be used or permitted to be used for the sale of tickets for opposition, rival or competing lines with either of the parties hereto; and that neither of said parties hereto will sell, or permit to be sold in its offices, tickets for such rival or competing lines; and that no handbills, placards or advertisements of such rival or competing lines shall be posted in any part of the depot, or of the offices or rooms reserved for the exclusive use of either of the parties hereto; and that no runners or persons employed in the sale of tickets or in procuring contracts for freight, passengers or baggage for such rival or competing lines, shall be allowed in or upon any part of said depot, or there permitted to ply such vocation.

Lessor's Covenant for Peaceable Possession.

Section XXXVIII. And the said party of the first part covenants and agrees with the parties of the second and third parts hereto respectively that, the said several parties of the second and third parts paying the rent and sums of money hereinbefore reserved, and performing the covenants and agreements aforesaid on their parts respectively to be performed, shall and may at all times during the term hereby granted, peaceably have, hold and enjoy the premises herein demised to them respectively, without any manner of trouble or hindrance of or from the party
409 of the first part, or any other person or persons claiming under them.

Proviso as to Rebuilding in Certain Cases. Expense Thereof, How Borne.

Section XXXIX. In case of a total destruction of the depot building by act of God, fire, civil commotion, violence or casualty, the said building shall be rebuilt with all possible despatch, and at the joint expense of the several parties hereto, which they shall bear in the proportions in which the taxes and assessments on said property are heretofore agreed to be borne.

Proviso as to Assigning Lease. In Case of Consolidation. Proviso as to Competing Line.

Section XL. It is agreed that either of the Companies parties hereto, may assign and transfer its rights and interests under this lease to either of the other Companies parties hereto. And that in case either of the parties hereto shall become consolidated, or united with, or merge in, either of the other Companies parties hereto, or shall become consolidated, or united with, or merge in, any other Company which shall operate the present railroad of such Company party hereto, the transfer by the latter of its interests under this lease to such other Company shall not be deemed a transfer or alienation contrary to the provisions of this lease. Provided, however, that if such Company to which it may be proposed to make such transfer be a rival, opposition or competing line to or with either of the Companies parties hereto, such transfer shall not be made without the consent of such latter Company; and also further provided, that no transfer made by virtue of this section shall authorize or entitle the transferee or assignee to use the said depot premises, privileges or accommodations hereby demised, or any part thereof, for any purposes other than those to which the same are by the terms hereof restricted.

Provision to Readjust Rent at End of Five Years. On Application of Either Party. On Six Months' Notice. Arbitration Provided For. Re-adjustment at End of Each Period of Five Years.

Section XLI. It is further agreed that the provisions which regulate the percentage or proportion of the aggregate cost of the said premises and property leased, the in-

terest on which is the rent which the parties are to pay for the portions of the premises and property hereby allotted to or demised to them, respectively, and the provi-
410 sions which regulate the percentage or proportion in which the respective parties agree to bear and pay the annual charges and repairs, and other expenditures mentioned in sections twenty-nine, thirty and thirty-one of this agreement, shall, at the expiration of five years from the day when this lease shall take effect, be revised and re-adjusted on the application of either of the parties hereto; provided, that such party so desiring such revision shall give notice in writing to each of the other parties hereto, six months before the expiration of said five years, and in such case, unless the parties hereto shall, by agreement, adjust the said percentages or proportions, such revision shall be made by three persons as herein provided, who shall, after hearing the several parties and such testimony as they shall offer, make and deliver in triplicate to each of the said parties, a report, in writing, signed by them, stating the conclusions reached by them, and their reasons; and the report of said persons shall be binding upon the several parties hereto until the expiration of the second period of five years; and in respect thereto, this instrument shall be construed and take effect as if its provisions had been modified in conformity with such report; and at the expiration of each successive period of five years the said percentages shall be subject to revision and modification in the manner above mentioned.

Arbitrators; How Appointed, in Case Parties Fail to Agree Upon Them. Aggregate Cost of Premises Not to be Readjusted.

If the parties shall fail to agree upon the three persons to make such revision, they shall be appointed by the Chief Justice of the Court of Appeals of the State of New York, in writing, upon the application of the party desiring such revision, and upon a previous notice, in writing, to each of the other parties, of thirty days, specifying the time and place, when and where such application is to be made. It is expressly understood that this section does not authorize any re-adjustment of the aggregate cost of the premises and property leased, nor of the particular portions of the

depot and yard for the storage of cars allotted to and occupied by each party.

411 N. Y., N. H. & H. May Use Certain Tracks Through the Depot in Case Certain Tracks Now Outside are Removed.

Section XLII. So long as the two main tracks in Fourth avenue, lying outside and easterly of the easterly wall of said depot shall remain, and the New York, New Haven and Hartford Railroad Company shall be allowed to use the same in the manner provided in an agreement of March seventeenth, one thousand eight hundred and forty-eight, between The New York and Harlem Railroad Company and The New York and New Haven Railroad Company, The New York, New Haven and Hartford Railroad Company shall not have or claim any rights in said depot or on any of the tracks running into or through the same, except such as may be conferred by this lease, but shall use said two outside tracks under said agreement of March seventeenth, one thousand eight hundred and forty-eight; and that in case said outside tracks shall be removed, or the use thereof shall be prohibited by the public authorities, the two tracks now running through the said depot shall be the main tracks of The New York and Harlem Railroad Company, and subject to use by the parties to said agreement as such; and the said parties shall be allowed to pass over the said two tracks and through the said depot, but not to stop, or receive, or discharge passengers, freight or other articles therein, or to make any use thereof other than to use said two tracks for the transit of its cars to and from points below Forty-second street, except as provided in and in pursuance of and under this lease.

Depot Master Authorized to Make Certain Changes in Premises Within Six Months.

Section XLIII. The Depot Master is hereby authorized and empowered, within six months from the date of this agreement, in case he shall find it necessary, to properly accommodate the baggage, mail and light express matter carried in baggage cars as provided by this agreement for

the outgoing trains of said second party, to cut off the easterly end of the wide platform on diagram A, numbered fifteen (15), and to put in an additional track as shown by the dotted lines, numbered sixteen (16), and to permit the baggage cars of outgoing trains of the said second party to be brought upon said track for the purpose of being
412 loaded; also to cut a window-opening through the division wall at the point marked seventeen (17), and a doorway at point marked eighteen (18) on said diagram, in order to enable passengers of said second party to pass through and check their baggage.

In Witness Whereof, the parties hereto have hereunto caused their respective corporate seals to be affixed, and these Presents to be subscribed by the Vice-President of the parties of the first and third parts, and the President of the party of the second part.

[Seal New York & Harlem R. R. Co.]

THE NEW YORK AND HARLEM RAILROAD COMPANY,
By W. H. VANDERBILT,
Vice-President.

Attest:
ROBERT J. NIVEN,
Secretary.

[Seal New York, New Haven & Hartford R. R. Co.]

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD CO.,
By WM. D. BISHOP,
President.

[Seal New York, Central & Hudson River R. R. Co.]

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By W. H. VANDERBILT,
Vice-President.

Attest:
E. D. WORCESTER,
Sec'y N. Y. C. & H. R. R. Co.

Sealed and delivered in presence of
W. J. VAN ARSDALE.

STATE OF NEW YORK,
City and County of New York, ss:

On this seventeenth day of November, in the year one thousand eight hundred and seventy-two, before me personally came, Robert J. Niven, Secretary of The
413 New York and Harlem Railroad Company, to me personally known, who, being by me duly sworn, said: That he resided in the City of New York; that he was the Secretary of The New York and Harlem Railroad Company; that he knew the corporate seal of the said Company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto by the like order as Secretary of the said Company.

And the said Robert J. Niven further said: That he was acquainted with William H. Vanderbilt, and knew him to be the Vice-President of said Company; that the signature of the said William H. Vanderbilt, subscribed to the said instrument, was in the genuine handwriting of the said William H. Vanderbilt, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Robert J. Niven.

At same time, before me personally came, William D. Bishop, the President of The New York, New Haven and Hartford Railroad Company, with whom I am personally acquainted, who, being by me duly sworn, said: That he resided in the City of Bridgeport and State of Connecticut; that he was the President of The New York, New Haven and Hartford Railroad Company; that he knew the corporate seal of said Company; that the seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as President of said Company.

W. J. VAN ARSDALE,
Notary Public, New York Co.

STATE OF NEW YORK,
City and County of New York, ss:

On this 11th day of December, in the year 1872, before me personally came, Edwin D. Worcester, Secretary
414 of The New York Central and Hudson River Railroad Company, with whom I am personally ac-

quainted, who, being by me duly sworn, said: That he resided in the City of Albany; that he was the Secretary of The New York Central and Hudson River Railroad Company; that he knew the corporate seal of said Company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto by the like order, as Secretary of the said Company.

And the said Edwin D. Worcester further said: That he was acquainted with William H. Vanderbilt, and knew him to be the Vice-President of said Company; that the signature of the said William H. Vanderbilt, subscribed to the said instrument, was in the genuine handwriting of the said William H. Vanderbilt, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Edwin D. Worcester.

W. J. VAN ARSDALE,
Notary Public, New York Co.

415 RELATORS' EXHIBIT No. 11.

Witness Buckland.

Contract.

The New York and Harlem Rail Road Company and The New York Central and Hudson River Rail Road Company.

Dated April 1st, 1873. Expires April 1st, 2274.

Albany:

Weed, Parsons and Company, Printers.

1873.

416 Now, therefore, this contract witnesseth, That the said parties, in consideration of the premises, and of the several reservations, covenants and agreements hereinafter contained, to be kept and performed for the benefit of each, respectively, do hereby mutually covenant, contract, promise and agree, to and with each other, as follows:

First. The said party of the first part hereby demises and leases unto the said party of the second part, its successors

and assigns, the said railroad of the said party of the first part, extending from Forty-second street, in the city of New York, to Chatham Four Corners, as aforesaid; and the said branch line, extending from Melrose Station to Port Morris, as aforesaid; together with all the lands on which the said railroad and branch of the said party of the first part is constructed, or which are connected with or necessary for its use, and all the rights, easements, franchises and privileges in connection therewith, or which are appurtenant thereto; and all the turnouts, switches, sidings, branch tracks, telegraph lines, warehouses, depot grounds, depot buildings, wharves, docks, stations, bridges, shops, depots, car houses, engine houses, water stations, work shops, machine shops, and other buildings, superstructures, erections and fixtures used therewith or belonging thereto, and the land and premises on which the same are situated and standing, now used or belonging, or in any wise appertaining to the said railroad and branch of the said party of the first part, and all other the real estate and chattels real of the said party of the first part, situate, lying and being north of Forty-second street, in the city of New York, (except as hereinafter reserved to itself, or agreed to be conveyed absolutely to the said party of the second part,) whether used for railroad purposes or not. Also all the cars, locomotives, engines, rolling stock, tools, machinery and all other the equipments and appliances belonging to, or connected with the said railroad and branch, and the use thereof, and all the rights, privileges and franchises of the said party of the first part, including all its rights to construct, maintain and operate a railroad; [subject, however, to the provisions of a certain contract with The New York and New Haven Railroad Company, hereinafter mentioned;] and the right to ask, demand and receive, for the use and benefit of the said party of the second part, all the tolls, profits, income, rent from subletting and charges which may or can be legally demanded or received for the transportation of persons or property over the said
417 railroad and branch of the said party of the first part or any part thereof, or resulting in anywise from the use or occupation of the said railroad and branch of the said party of the first part. And all the rights, title and interest of the said party of the first part in and to the said railroad of the said The New York and Mahopac Railroad Company, held under a lease, as aforesaid; which said

lease, bearing date the seventeenth day of June, one thousand eight hundred and seventy-two, and expiring on the thirty-first day of December, one thousand nine hundred and seventy-one, it hereby assigns and transfers to the said party of the second part, together with all its rights and benefits therefrom or thereunder.

To have and to hold the said demised railroad, branch and leased line, premises, equipments and appliances, rights, privileges and franchises unto the said party of the second part, its successors and assigns, for and during the full term and period of four hundred and one years from the first day of April, one thousand eight hundred and seventy-three.

Yielding and paying therefor, to or on account of the said party of the first part, during the continuance of the said demised term, an annual rent, to be paid as follows:

First. By paying to the several stockholders in the said party of the first part, semi-annually, on each first day of July and first day of January, or whenever, thereafter, it shall be demanded, two dollars per share upon each share of its capital stock, held by them, respectively, at the time of closing the transfer books as hereinafter provided; such two dollars per share being equal to eight per centum per annum on the par value of such capital stock.

But, in order to fairly adjust the first payment, so to be made by the said party of the second part, under this article, with reference to the date of the taking effect of this contract and the time of making such first payment, the said party of the first part covenants and agrees that it will, on or before the thirtieth day of June, one thousand eight hundred and seventy-three, pay to the said party of the second part the sum of one hundred and eighty thousand dollars ($180,000), being equal to one dollar per share on the amount of its capital stock now outstanding, and equal to the part of eight per centum per annum thereon, that would accrue between the first day of January, one thousand eight hundred and seventy-three (when the last dividend was paid thereon), and the first day of April, one thousand eight hundred and seventy-three (when this contract takes effect).

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Second. By paying the interest on the bonds of the said party of the first part, as described in the schedule hereto

annexed marked "A," according to the conditions of said bonds, respectively, and as such interest shall, from time to time, become due and payable and shall be demanded.

But, in order to fairly adjust the first payment of interest, to be made by the said party of the second part, on each kind of bonds mentioned in the said schedule, with reference to the date of the taking effect of this contract, the said party of the first part covenants and agrees that it will, on or before the day on which the first interest shall, ensuing the date hereof, become due and payable on any of the bonds described in the said schedule, pay to the said party of the second part an amount equal to the amount of interest accrued, in each case, between the date of the last payment of interest on such bonds and the first day of April, one thousand eight hundred and seventy-three:

It being mutually covenanted and agreed that the payments to be made under this and the previous subdivision of article first may be in the "Consolidated Mortgage" bonds of the said party of the first part, hereinafter mentioned, which bonds, so paid to the said party of the second part, may be used by it for its own sole and separate use and benefit:

It being further mutually covenanted and agreed that the amounts outstanding of the said capital stock, and of the said bonds described in said schedule "A," are subject to the provisions of the third and fourth articles hereof as to an increase of each, and as to the payments to be made by the said party of the second part upon such increase of each, if, and when made.

Third. And by paying the rent agreed to be paid by the said party of the first part to the New York and Mahopac Railroad Company, according to the terms and conditions of the lease hereinbefore referred to.

Second. The said party of the second part covenants and agrees to pay the said sum of two dollars per share upon the capital stock of the said party of the first part; the said interest on its bonds; and the said rent to the said The New York and Mahopac Railroad Company, at the times and in the manner set forth in the preceding
419 article hereof; that it will at all times control, manage and operate the said railroad, branch, property, and franchises of the said party of the first part in compliance with the provisions of the Charter of the said

party of the first part and the laws applicable thereto; that it will manage and operate the said railroad of the said The New York and Mahopac Railroad Company in compliance with all the provisions of the lease hereinbefore mentioned, and will keep and perform each and every of the covenants and agreements of the said party of the first part therein contained; and that it will pay all taxes, charges and assessments, ordinary and extraordinary, that may be imposed or assessed in any way on said railroad, branch, or property, or any part thereof, or upon or against the said party of the first part by reason thereof.

Third. The said party of the first part covenants and agrees that its authorized capital stock amounts to ten millions of dollars ($10,000,000), and no more, consisting of two hundred thousand shares of the par value of fifty dollars per share; that thirty thousand of said shares are of the kind known as "preferred" stock, and that one hundred and seventy thousand of said shares are of the kind known as "common" stock. That of the said "common" stock, twenty thousand shares (amounting, at par, to one million of dollars) remain unissued, which said twenty thousand shares it agrees to issue, forthwith, to the said party of the second part, to be disposed of by it whenever it may choose; provided, however, as follows:

First. That they shall not be disposed of at less than the market price at the time of such disposition, according to the resolution of the stockholders in the said party of the first part, adopted April 11, 1871, with regard thereto.

Second. That the moneys derived from the disposition of any of the said shares shall be expended by the said party of the second part in completing, extending, improving, or equipping the railroad, branch and property hereby demised, or in paying off or redeeming the bonds of the said party of the first part hereinbefore described, or in acquiring or perfecting title to real estate for the uses and purposes of the said railroad of the said party of the first part.

Third. That the so-called "Fourth Avenue Improvement," hereinafter mentioned, shall be deemed an improvement within the meaning of this article.

420 *Fourth.* That whenever any of the said shares shall be disposed of, the holders thereof shall thereafter be entitled to receive thereon, semi-annually, two

dollars per share, to be paid by the said party of the second part under the provisions of the first and second articles hereof.

Fourth. The said party of the first part covenants and agrees that the schedule hereto annexed, marked "A," contains a full and correct statement of its outstanding bonds, including special bonds, secured by mortgages on specific lands, other than such special bonds secured by mortgages on lands conveyed, under the provisions hereof, as hereinafter contained, to the said party of the second part in fee, but conveyed subject to such mortgages); that the issue described in said schedule as "Consolidated Mortgage, due May 1, 1900," was duly authorized to be made for the amount of twelve millions of dollars ($12,000,000), that seven millions, four hundred and eighty-eight thousand dollars ($7,488,000) in amount of the bonds of the said issue remain unsold—which bonds so unsold it agrees to deliver herewith to the said party of the second part to be disposed of by it as follows: *First.* By holding or selling, for its own use and benefit, such part thereof as shall, at their par value, equal the amount to be paid by the said party of the first part, under the first and second sub-divisions of the first article hereof, for proportions of dividend and interest accrued to the first day of April, one thousand eight hundred and seventy-three, and, *Second.* By selling the remainder thereof in its own discretion, subject to the following conditions:—*First.* That the money derived by it from the sale of the whole or any part of such remainder shall be used in the same manner as is prescribed in the third article hereof with regard to moneys derived from disposing of stock. *Second.* That whenever any of the bonds of such remainder shall be sold, the interest which shall thereafter become due and payable thereon shall be paid by the said party of the second part, in addition to that on the amount of said bonds mentioned in said schedule "A"; provided, however, as follows:

First. That this condition to pay interest shall apply also to the bonds that may be sold by the said party of the second part for its own use and benefit as hereinbefore authorized.

Second. That the said party of the second part may issue any of the bonds of the said remainder in ex-
421 change or substitution for, and upon the surrender for that purpose of any other of the outstanding

bonds of the said party of the first part described in the said schedule.

Third. That the title to any real estate acquired by the payment of moneys derived from disposing of the said capital stock under the third article hereof, or from the sale of any of the bonds of said remainder, under this article, shall be taken to and in the name of the said party of the first part.

Fourth. That any and all property acquired with the moneys mentioned in the preceding proviso shall be deemed to be held by the said party of the second part, under this contract, and subject to the provisions thereof.

Fifth. The said party of the first part covenants and agrees that it will not, during the continuance of this contract, authorize, create or issue any stock or bonds additional to the amounts thereof respectively, now authorized or outstanding, as hereinbefore stated, except at the request, or upon the demand, of the said party of the second part, as hereinafter set forth; *provided, however,* that the said party of the second part may, at the request of the said party of the first part, and for purposes connected with operating the street railroad hereinafter mentioned, abate the covenant of the said party of the first part contained in this article; but any abatement shall be entirely at the option of the said party of the second part as to granting at all, or as to the extent to be granted.

Sixth. The said party of the second part covenants and agrees, that it will pay the principal of all the bonds described in said schedule "A," other than the bonds therein described as "Consolidated Mortgage, due May 1, 1900," as they shall respectively mature and be presented for payment, and that it will, at the maturity thereof, pay the principal of the said "Consolidated Mortgage" bonds, if, and in case, it should not be paid by the said party of the first part.

In case of the payment thereof, or of some or any part thereof by the said party of the first part, then, and in that event, the said party of the second part shall, thereafter, pay to the said party of the first part, semi-annually, on the days when interest would become due and payable on the said bonds, if the time thereof had been extended, an amount equal to such interest on said bonds, or on such

part of them as may have been paid by the said
422 party of the first part, so as fairly to adjust the obligation of the said party of the second part, herein contained, as to the annual rent on the said railroad and property herein demised.

In case, however, the said "Consolidated Mortgage" bonds shall be paid by the said party of the second part, the said party of the first part agrees that it will, whenever requested by the said party of the second part so to do, issue in lieu thereof new bonds bearing a similar rate of interest, or such other rate as may be agreed upon, with, so far as may be required, proper coupons or interest warrants therefor appended, and secured by a suitable mortgage upon the railroad property and franchises hereby demised; such bonds to be payable at such time or times, and to such person or persons as may be prescribed by the said party of the second part; and will deliver such new bonds to the said party of the second part to be sold or disposed of in its discretion; in which case the obligation of the said party of the second part herein contained, with regard to the payment of interest on the said "Consolidated Mortgage" bonds shall be deemed and held to apply to interest on such new bonds.

And at the maturity of such new bonds the process herein provided for shall be repeated; and so on, as often as may be necessary, during the continuance of this contract.

Seventh. The said party of the first part being the owner of a railroad, that is operated by horse power, running through certain streets and avenues in the city of New York, it is expressly covenanted and agreed between the said parties hereto that such railroad, with all the equipment, horses, harness and paraphernalia, and all the rights, easements, franchises, uses and benefits pertaining thereto or connected therewith, is reserved to the said party of the first part, to be controlled, managed and enjoyed for its own sole and separate use and benefit, as fully and entirely as if this contract had not been made; but this reservation is to be subject to the right of The New York, New Haven and Hartford Railroad Company, and that of the said party of the second part to run freight cars over said railroad to the premises on White, Centre, Franklin and Elm streets, as hereinafter provided.

And whereas certain lots of land situate at the northwest corner of Madison avenue and Eighty-eighth street, in the said city, were purchased by the said party of the first part for the uses and purposes of the railroad operated by horse power, mentioned in this article; it is covenanted and agreed that the said lots of land are expressly ex-
423 empted from the operation of this contract, and are reserved to the said party of the first part for its own sole and exclusive use and benefit.

Eighth. It is further mutually covenanted and agreed between the said parties hereto, that all the real estate owned by the said party of the first part, situate south of Forty-second street, in the city of New York, is expressly exempted from the operation of this contract, and is reserved by the said party of the first part for its own sole and exclusive use and benefit; *provided, however*, that the leasehold of the said party of the first part, in certain premises situate on White, Centre, Franklin and Elm streets, in said city, together with its interest in certain buildings thereon, is to be assigned and transferred to the said party of the second part as hereinafter specified.

Ninth. The said party of the first part having, under date of March 17th, 1848, entered into an agreement and contract of transportation with The New York and New Haven Railroad Company, by which that company acquired, upon the conditions therein named, certain rights upon and to use the tracks and certain of the property and premises of the said party of the first part—which said contract, as modified, from time to time, under the provisions thereof has been succeeded to by the New York, New Haven and Hartford Railroad Company—it is covenanted and agreed by the said party of the first part that it will, and it does, hereby, specifically, assign and transfer the said contract to the said party of the second part, with all the reservations, rents, revenues, uses, benefits and profits to be derived or received from or under it.

But it is expressly covenanted and agreed by the said party of the first part, that so far as the provisions of the said contract grants to the said The New York and New Haven (now The New York, New Haven and Hartford) Railroad Company any rights upon, or to use the track or appurtenances of the railroad of the said party of the first part operated by horse-power aforesaid, all covenants and

agreements in relation thereto shall continue to be kept and performed, as heretofore, by it the said party of the first part, as one of the general considerations of this contract.

And the said party of the second party covenants and agrees that it will carry out, fulfill and perform each and every of the conditions in said contract with the said The New York and New Haven Railroad Company, im-
424 posed upon the said party of the first part, so far as they relate to or are connected with the railroad or property that is hereby demised, or that are therein, in that respect, agreed by the said party of the first part to be kept, fulfilled or performed.

Tenth. The said party of the first part having, under date of November 1st, 1872, entered into a lease (commonly called the "Tripartite Lease") with The New York, New Haven and Hartford Railroad Company and The New York Central and Hudson River Railroad Company (the said party of the second part), leasing to the said companies respectively, certain parts of the depot of the said party of the first part, situate on Forty-second street and Fourth avenue, in the city of New York, and commonly known as the "Grand Central Depot," together with certain uses of grounds, tracks, buildings and appurtenances connected with the said Depot and the other premises of the said party of the first part, as will by reference to the said lease more fully appear, the said party of the first part covenants and agrees that it will, and it does, hereby specifically, assign and transfer to the said party of the second part the said "Tripartite Lease," and all the reservations, rents, revenues, uses, benefits and profits to be derived therefrom or thereunder.

And the said party of the second part covenants and agrees that it will carry out, fulfill and perform each and every of the conditions and obligations therein imposed upon the said party of the first part, or by it agreed to be fulfilled and performed.

But it is expressly covenanted and agreed that the existing arrangement under which the "Horse Cars" of the said party of the first part run into the said Depot shall continue during, and only during the pleasure of the said party of the second part, and that such arrangement may be terminated by it, at any time, upon giving thirty days' previous

notice in writing to the said party of the first part that it elects to terminate it; *provided*, that so long as the said existing arrangement shall continue, the expense of maintaining the street railroad tracks into and in the said Depot shall be borne and paid by the said party of the first part, and that upon any termination of said arrangement the said party of the first part shall, at its own expense, remove said tracks and restore the premises to a good and proper condition.

Eleventh. The New York and New Haven (Now The New York, New Haven and Hartford) Railroad Company being the lessees from the Mayor, Aldermen and Commonalty of the city of New York, by a certain lease dated the 1st day of September, 1871, of a certain block of ground situate in said city and bounded by White, Centre, Franklin and Elm streets; which said lease is, by an instrument in writing thereto annexed, executed by the said The New York and New Haven Railroad Company, declared to have been taken for the joint account and benefit of that company and the said party of the first part; and that it is to be held for such joint account and benefit upon the payment by the said party of the first part of one-half the rent reserved by said lease, and one half the taxes and assessments imposed upon the said premises; and the said party of the first part having paid one-half the cost of erecting a certain building on said premises for the purposes of a freight depot; the said party of the first part hereby assigns and transfers to the said party of the second part all its right, title and interest in and to the said lease and in and to the said building, with all the uses, benefits, rents, revenues and profits to be derived therefrom or thereunder, or from or under the said declaration annexed to the said lease.

And the said party of the second part covenants and agrees that it will, and it does, hereby, assume to keep and perform each and every of the covenants and obligations entered into by or imposed upon the said party of the first part in the said lease or the said declaration thereto annexed.

Twelfth. The said party of the first part covenants and agrees that the said party of the second part shall have the right to use the tracks of the street railroad, owned by the said party of the first part, as hereinbefore stated, for the

purpose of, and so far as may be necessary to hauling, between Forty-second street aforesaid and the building used as a freight depot, on White, Centre, Franklin and Elm streets mentioned in the preceding article, any freight cars that it may use in connection with business or traffic coming from or going to points on the line of the steam railroad of the said party of the first part herein demised; provided, however, as follows.

First. That such use of said street railroad shall be so managed as not to interfere unnecessarily with its use by the said party of the first part for a city passenger business with "Horse Cars."

Second. That the expense of such hauling shall be borne and paid by the said party of the second part.

Third. That the expense of maintaining the tracks that diverge from the tracks of the said street railroad of
426 the said party of the first part into the said freight depot, and the tracks that connect the said steam railroad with the said street railroad at Forty-second street, aforesaid, shall also be borne and paid by the said party of the second part.

Thirteenth. The said party of the first part having, under and in virtue of an act of the Legislature of the State of New York, entitled "An act to improve and regulate the use of Fourth avenue in the city of New York," passed May 14th, 1872 (known as chapter 702 of the Laws of 1872), entered into certain contracts for certain work and improvements upon and along its line through said Fourth avenue, north of said Forty-second street; which said contracts are described in the schedule hereto annexed, marked "B;" it is covenanted and agreed by the said party of the first part that it will, and it does, hereby, specifically assign and transfer the said contracts, and each of them, with all the benefits and privileges thereunder, to the said party of the second part. And the said party of the second part covenants and agrees that it will keep, fulfill and perform all the covenants and promises in said contracts, and either of them provided to be kept, fulfilled and performed by the said party of the first part; and that it will do and perform all acts and things required by the said act to be done and performed by the said party of the first part.

And whereas under the provisions of the said act, one-half the expenses of the said improvement of said Fourth

avenue is to be borne and paid by the city of New York, in the manner therein provided; it is covenanted and agreed that the amounts due and payable from time to time, on said contracts, or either of them, shall be paid by the said party of the first part but with money to be furnished to it by the said party of the second part; which money the said party of the second part agrees so to furnish to the said party of the first part, whenever, and as, from time to time, it shall be needed for the purpose named, that the said party of the first part will comply with and fulfill all the requirements of the said act that may be necessary to enable it to collect from the city of New York the amounts to be paid by the said city from time to time under the provisions of the said act; that it will receive and collect all such amounts from the said city, and will, through its appropriate officers, execute in due form all necessary and proper certificates, receipts, discharges and vouchers to said city therefor, or in connection therewith, and that it will, forthwith, pay over to the said party of the second part, each and every amount collected from the said
427 city under the provisions of the said act, or in connection with the said improvement of said Fourth avenue; *provided, however,* that nothing herein contained shall prevent the said party of the second part (if it shall elect so to do) from paying moneys under the said contracts described in the said schedule "B," or either of them, direct to the party or parties named in them respectively, or from collecting or receiving from the said city of New York any moneys collectible from or payable by it.

Fourteenth. In addition to the leases and contracts hereinbefore specifically assigned and transferred by the said party of the first part to the said party of the second part, the said party of the first part hereby assigns and transfers to the said party of the second part all other leases, contracts or agreements, whether written or verbal, to which it, the said party of the first part, is a party, with all the uses and benefits therefrom or thereunder. And the said party of the second part covenants and agrees to keep, fulfill and perform all the covenants and provisions of all such leases, contracts or agreements, therein or thereby agreed to be kept, fulfilled and performed by the said party of the first part; *provided, however,* that this article shall not be held to include any contracts or agreements belong-

ing to, or connected with the operations of the said street railroad of the said party of the first part.

Fifteenth. The said party of the first part covenants and agrees that it will, from time to time, and at any and all times hereafter, at the request of the said party of the second part, make, execute and deliver, all such other and further specific or general assignments and transfers, instruments and assurances in the law, for the further, better or more perfectly assigning and transferring the said leases, contracts and agreements, or for the further, better or more perfectly assuring the railroad, premises and property herein or hereby demised or conveyed by it to the said party of the second part, according to the true intent and meaning of these presents, as by the said party of the second part, or its counsel learned in the law, shall or may be reasonably devised, advised or required.

But it is expressly covenanted and agreed that all the assignments and transfers, whether specific or general, made or to be made by or under these presents are, and shall be for, and only for the term of years for which the steam railroad of the said party of the first part is, herein,
demised to the said party of the second part; and
428 that all the covenants and agreements of the said
party of the second part, herein contained, are and shall be for, and only for the same term of years.

Sixteenth. The said party of the second part covenants and agrees that it will, during the continuance of this contract, do every act and thing that may by law be required of or obligatory upon it, or upon the said party of the first part, in respect to the operation, condition, maintenance and use of the said railroad, branch, premises and property hereby demised, and every part thereof including the keeping and rendition of all accounts and reports.

That the said party of the second part shall and will, at all times, indemnify and keep indemnified and harmless, the said party of the first part from all costs, suits, expenses and damages, that the said party of the first part may sustain or incur by reason of any default or failure, or any alleged default or failure of the said party of the second part, its grantees or agents, in the operation, management or use of the said railroad branch, premises and property hereby demised, or any part thereof, or in its or their omission to do and perform any act or thing which may be

required by law to be done or performed by the said party of the first part; but the said party of the second part, its successors or assigns, may, at any time during the continuance of the demised term, change and alter the line, way and gauge of the said demised railroad, or branch, and, in so doing may discontinue any part of the present way or track of said railroad or branch, and any of the machine shops or depots not required for the use of the line, and may also change the grade or grades of the road, and alter or change the location of any of the tracks, water stations, buildings or erections appurtenant thereto, or connected therewith, and may also, if it shall deem it necessary, purchase and acquire title to any additional real estate for the use of said road, or may exchange its lands or buildings for other lands more convenient or necessary for its use, and of equal value for the uses and purposes of the said road; but all such alterations, changes, purchases or exchanges are to be made at the proper cost and charge of the said party of the second part; and the said party of the second part, its successors and assigns, may also, from time to time, during the continuance of the said term, sell and dispose of such part of the demised premises and property as may not be necessary for the use of the said demised railroad and branch; and the said party of the first part, its successors and assigns, shall, in the
429 case of any such sale or exchange, and upon the demand, in writing, of the said party of the second part, at any time, and from time to time, execute, in due form of law, a good and sufficient deed, but without covenants of warranty or title, of any part of the said premises which the said party of the second part, its successors or assigns, may so agree to sell or exchange, as aforesaid, to the purchaser, or the party with whom the exchange shall be made, on such terms and conditions, not inconsistent with the rights of the said party of the first part, as the said party of the second part may require; but all such deeds are to be prepared, executed and delivered at the cost and expense of the said party of the second part. All the premises received in exchange are to be conveyed to the said party of the first part, and held by the parties hereto, as if the same were now part of the premises hereby demised, and the said party of the second part covenants and agrees to pay all taxes, assessments and

charges thereon, and protect the same against all liens thereon.

Seventeenth. The said party of the second part covenants and agrees that at the expiration or other determination of the term for which the said railroad and branch of the said party of the first part is herein or hereby demised, it will surrender the said railroad and branch, with a perfect track, and all proper depots, stations, shops, grounds, buildings, structures, etc., and in as good state and condition and of as much value, in all respects, as when it received them. That it will pay over to the said party of the first part the proportionate part of the two dollars per share on the capital stock of the said party of the first part that shall be due to the period between the last payment thereof made to the stockholders in the said party of the first part, under the provisions of this contract, and the date of such surrender; together with an amount equal to the interest accrued on the bonds of the said party of the first part from the date of the last payment of interest on each kind of bonds to the date of such surrender. And that it will account for and pay over to the said party of the first part the consideration-money received for any portion of the lands hereby demised, which, having been found not necessary for the use of the said demised railroad and branch, may have been disposed of absolutely, except such as may have been exchanged for other lands of equal value; but no interest is to accrue on such consideration-money during the continuance of this contract; and, on the termination of this contract, the said party of the first part, its successors and assigns, shall pay to the said party of the second part, its successors and assigns, the amount expended out of its own means, but without interest, in the acquirement, otherwise than by exchange, of additional real estate for the use of the railroad and branch hereby demised; provided, the said party of the first part shall elect to take the same; so far it shall elect not to take such real estate, it shall, if the title has been taken in its name, convey the same as the said party of the second part shall direct, but without covenants of warranty.

And whereas the said party of the first part has and owns, as a part and parcel of the property hereby demised, personal property in locomotives, engines and tenders, pas-

sengers cars, baggage cars, freight and other cars, tools, fixtures, machinery, supplies, material and other effects, amounting, as is agreed by the said parties hereto, to the value of one million, one hundred and three thousand nine hundred dollars, ($1,103,900,) for a more particular account of which reference is made to a schedule hereto annexed, marked "C" it is hereby covenanted and agreed by the said party of the second part, that, at the termination of this contract, it will surrender, or transfer and deliver to the said party of the first part, personal property of a similar kind and equal in value to that mentioned in the said schedule and hereby demised.

Eighteenth. The said party of the first part covenants and agrees that the said party of the second part shall, upon the payment, in the manner herein provided, of the annual rent herein reserved, and keeping and performing the covenants and agreements herein agreed by it to be kept and performed on its part, have the uninterrupted possession, use, control and management of the said railroad and branch, and of the said real estate, premises and property herein demised, with the right to ask, demand and receive for its own use and benefit, all tolls and charges, fares and freights which may or can be legally demanded and received for the transportation of persons and property upon and over the same, or any part thereof; and all the income and revenue of the aforesaid estate and property of the said party of the first part, and all other its rights, privileges, franchises and benefits, in its quiet and peaceable possession and enjoyment, without detriment, hindrance, interruption or molestation from the said party of the first part, or its successors or assigns, or from any its present or future officer, director or stockholder, for and during the term of this contract.

431 The distributing system thus to be used jointly by both Companies is illustrated and described upon Schedule VI, hereto attached and hereby made a part of this agreement.

19. The New Haven Company further covenants and agrees with the Central Company to pay to the Central Company for the use of the distributing system between Port Morris power house and the contact shoes of its equipment using the same, as described in Sections 17 and 18, a proportion of interest reckoned at the rate of four and one-

quarter (4¼) per centum per annum on the actual net expenditures made or to be made as follows:

(*a*) In constructing and completing the said distributing system shown upon Schedule VI;

(*b*) In repairing, rebuilding or changing any part of the said distributing system made necessary by act of God, fire, civil commotion, violence, casualty or operation of law;

(*c*) In making any other changes or additions to the said distributing system to which the New Haven Company shall have previously given its written consent.

These three items shall be payable quarterly.

The New Haven Company further covenants and agrees with the Central Company to pay the Central Company as compensation for the use of the said distributing system, a proportion:

(*d*) Of all premiums for insurance which may be placed, and of all taxes and assessments which may be levied upon the said distributing system during the term hereby granted, payable annually;

(*e*) Of all net cost of maintenance, repairs and renewals of the distributing system;

432 of the first part shall, so far as is practicable and as shall be consistent with its rights, allow and employ the said party of the second part, its successors and assigns, to do and perform, by its officers and agents, for and in behalf of the said party of the first part, all the business, acts and things necessary to be done and performed to maintain the organization and existence of the said party of the first part as a body corporate, and to preserve and protect the estate, property, rights, franchises and interests demised, as aforesaid, to the said party of the second part.

Twenty-first. For the purpose of carrying this contract into effect, the said party of the first part, in consideration of the premises, hereby irrevocably constitutes and appoints the said party of the second part its attorney, for and during the term of this contract, for the said party of the first part, and in its name, to do all acts, matters and things not inconsistent with the rights of the said party of the first part hereunder, necessary to fulfill, enforce and carry out all and every of the provisions of this contract, according to its true intent and meaning, and the said party of the first part hereby constitutes and appoints the said party of the

second part its transfer-agent, with power, by or through its officers and agents, or its own proper transfer-agent, to do and perform, but at its own expense, all acts and things pertaining to transferring the title to the capital stock of the said party of the first part, and to such of its bonds as are of the kind commonly called "registered," and to keep all necessary books in connection therewith; and it is mutually agreed that the transfer books for either capital stock or registered bonds may be closed, at the option of the said party of the second part, a suitable time before each payment of two dollars per share on such stock, or of any interest on such bonds, and that the payments herein provided to be made to the holders of capital stock of the said party of the first part, and the payment of such of the interest on its bonds as shall be upon the kind called "registered" shall be to such persons or parties as shall, at the time of making such payments, respectively, appear upon the books, so to be kept by the said party of the second part, to be stockholders in the said party of the first part, or to be holders of its "registered" bonds.

Twenty-second. The said party of the first part covenants and agrees that it will fully pay off and discharge all floating debt and liabilities that may be outstanding
433 or existing against it on or to the first day of April, one thousand eight hundred and seventy-three, growing out of the "*operating*" of its said steam railroad and branch herein demised; and it is mutually covenanted and agreed that it, the said party of the first part, may retain for this purpose, and, otherwise, for its own use and benefit, all cash, cash items, bills receivable, and other evidences of debt, and all balances of account due to it from persons, agents and connecting lines; *provided, however,* that certain bonds and mortgages held by it for part consideration of real estate heretofore sold and conveyed by it shall be assigned to the said party of the second part as is hereinafter prescribed; and *provided, further,* that all recoveries for damages or costs in any action now pending, or upon any cause of action now existing against the said party of the first part on account of the said steam railroad, or its operation, shall be assumed and paid by the said party of the second part.

It is further mutually covenanted and agreed that all debt and liabilities outstanding or existing on the said first day of April, on account of the "*construction*" of the said railroad, or on account of the leases, contracts or agreements herein assigned and transferred to the said party of the second part, shall be assumed and paid by the said party of the second part; and that all rents, revenues, profits and benefits, in favor of the said party of the first part, accrued to the said first day of April, but not then due, or that may not then have been paid, shall pass to the said party of the second part for its own use and benefit hereunder.

And the said party of the second part covenants and agrees to keep and maintain the railroad and branch, premises and property hereby demised, and the appurtenances thereto belonging, in good order and condition; and to assume and pay all the expenses of maintaining and operating the said railroad and branch, and the appurtenances thereto belonging, from and including the said first day of April, and during the term of this contract.

Twenty-third. The said party of the first part being the owner of certain pieces or parcels of land, situate north of Forty-second street aforesaid, as described in the schedule hereto annexed, marked "D," which said pieces or parcels of land are not necessary to the operations of its said railroad herein demised to the said party of the second part, and the rents, reservations, covenants and provisions herein contained having been adjusted and fixed as hereinbefore set forth, with express reference to the pro-
434 visions contained in this article of these presents, the said party of the first part, in consideration thereof, and of one dollar to it in hand paid by the said party of the second part, covenants and agrees that it will prepare and duly seal, sign and deliver to the said party of the second part, simultaneously with the execution of these presents a good and sufficient deed, or good and sufficient deeds, conveying to the said party of the second part, its successors and assigns, the title *in fee* to the said pieces or parcels of land described in the said schedule "D;" *provided, however*, that the said deed or deeds need not contain any covenants of warranty; *and provided, further*, that the said title shall be conveyed subject to the mortgage liens now existing specifically on said pieces or par-

cels of land; such mortgage liens being also described in the said schedule "D," and the bonds given or assumed by the said party of the first part which are secured by such mortgage liens being omitted from the statement of the bonded debt of the said party of the first part contained in the schedule "A" mentioned in the fourth article of these presents; and subject also to the lien of any general mortgage given by the said party of the first part upon its railroad, property and franchises, if the lien of any such mortgage affects the said pieces or parcels of land.

Twenty-fourth. The said party of the first part being the owner of certain bonds and mortgages taken by it for part consideration for certain real estate heretofore sold and conveyed by it; which bonds and mortgages are described in the schedule hereto annexed marked "E;" and the adjustment of rent spoken of in the preceding article having had express reference to the provisions of this article also, the said party of the first part, in consideration of the premises, and of one dollar to it in hand paid by the said party of the second part hereby assigns the said bonds and mortgages mentioned and described in the said schedule "E," together with all moneys due and to become due thereon, to the said party of the second part for its own use and benefit; and it covenants and agrees to execute separate and sufficient formal assignments of the said bonds and mortgages, and to cause the same to be duly acknowledged by its proper officer and herewith delivered to the said party of the second part.

Twenty-fifth. The said party of the first part, being the holder of two hundred and sixty-five thousand dollars, in amount at par, of the capital stock of The New York and Mahopac Railroad Company, which amount is rep-
435 resented in or by the capital stock and bonded debt of the said party of the first part, as hereinbefore described, and on which the annual rent herein reserved was founded, the said party of the first part covenants and agrees that it will, simultaneously with the execution of these presents, transfer the said capital stock of the said The New York and Mahopac Railroad Company to the said party of the second part, and will deliver to it the proper certificates therefor.

In witness whereof, and by authority of resolutions of the respective Boards of Directors of the said parties hereto, adopted the first day of April, one thousand eight hundred and seventy-three, the corporate seals of the said railroad companies, parties hereto, are respectively hereto affixed, and attested by their respective Secretaries, and these presents have been signed by the Vice-President of the said The New York and Harlem Railroad Company, and by the President of the said The New York Central and Hudson River Railroad Company, the day and year first above written.

[Seal of the N. Y. & H. R. R. Co.]

THE NEW YORK AND HARLEM RAILROAD COMPANY,
By W. H. VANDERBILT,
Vice-President.

Attest:
ROBERT J. NIVEN,
Secretary.

[Seal of the N. Y. C. & H. R. R. R. Co.]

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By C. VANDERBILT,
President.

Attest:
E. D. WORCESTER,
Secretary.

436 STATE OF NEW YORK,
County of New York, ss:

On this first day of April, in the year 1873, before me came Robert J. Niven, Secretary of the New York and Harlem Railroad Company, to me personally known, who, being by me duly sworn said, that he resided in the city of New York; that he was the Secretary of The New York and Harlem Railroad Company; that he knew the corporate seal of the said Company; that the seal affixed to the foregoing instrument, and purporting to be the corporate seal of the said Company, was such corporate seal; that it was so affixed by order of the Board of Directors of the said Com-

pany, and that he signed his name thereto, by the like order, as Secretary of the said Company.

And the said Robert J. Niven further said, that he was acquainted with William H. Vanderbilt, and knew him to be the Vice-President of said Company; that the signature of the said William H. Vanderbilt, subscribed to the said instrument, was in the genuine handwriting of the said William H. Vanderbilt, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Robert J. Niven.

Also, before me, came Edwin D. Worcester, Secretary of the New York Central and Hudson River Railroad Company, to me personally known, who being by me duly sworn, said, that he resided in the city of Albany; that he was the Secretary of The New York Central and Hudson River Railroad Company; that he knew the corporate seal of the said Company; that the seal affixed to the foregoing instrument, and purporting to be the corporate seal of the said Company, was such corporate seal; that it was so affixed by order of the Board of Directors of the said Company, and that he signed his name thereto, by the like order, as Secretary of the said Company.

And the said Edwin D. Worcester further said, that he was acquainted with Cornelius Vanderbilt, and knew him to be the President of said Company; that the signature of the said Cornelius Vanderbilt, subscribed to the said instrument, was in the genuine handwriting of the said Cornelius Vanderbilt, and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Edwin D. Worcester.

W. J. VAN ARSDALE,
Notary Public, N. Y. Co.

437 RELATORS' EXHIBIT No. 12.

Witness Buckland.

Chap. 425, *Laws of* 1903.

An act to provide for further regulation of the terminals and approaches thereto of the New York and Harlem railroad at and north of Forty-second Street in the city of New York and of the public highway structures over said terminals and approaches and of the motive power to be used on said railroad.

Accepted by the city.

Became a law May 7, 1903, with the approval of the Governor.

Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Upon the approval and filing by the board of estimate and apportionment of the city of New York of the plans and profiles provided for in section three of this act, and the delivery of the grant provided for in section two of this act, the New York and Harlem Railroad Company, and its lessee the New York Central and Hudson River Railroad company, are and each of them is hereby authorized and directed to depress all of the existing tracks of the New York and Harlem Railroad company between Fifty-seventh street and Forty-second street, and Madison avenue and Lexington avenue, in the city of New York, to such grade, and to construct all tracks hereafter laid within the said limits or boundaries at such grades as will enable the city of New York to carry Forty-fifth street, Forty-sixth street, Forty-seventh street, Forty-eighth street and Forty-ninth street, across said tracks by suitable viaducts or bridges at a grade or grades not exceeding four per centum; and also to carry Fiftieth street, Fifty-first street, Fifty-second street, Fifty-third street, Fifty-fourth street,

438 Fifty-fifth street and Fifty-sixth street across said tracks by suitable viaducts or bridges at normal grade. The said railroad corporations are and each of them is hereby authorized to make such alterations and

changes in existing structures erected pursuant to chapter seven hundred and two of the laws of eighteen hundred and seventy-two, south of Fifty-ninth street, as may be necessary or reasonably required in carrying out the provisions of this act. The said railroad corporations are and each of them is hereby authorized, subject to the provisions of the building code of the city of New York, to make alterations, changes or additions in and to the passenger depot buildings, heretofore constructed between Forty-second street, Forty-fifth street, Vanderbilt avenue and Depew place, or to remove the said passenger depot buildings, or any part thereof, and to reconstruct the same or to construct new buildings to such an extent and in such manner as may be necessary or reasonably required in the proper management and conduct of their business, upon the said land bounded by Forty-second street, Forty-fifth street, Vanderbilt avenue and Depew place.

§ 2. In order to enable the said railroad corporations to depress their tracks as hereinbefore provided, and to permit the operation of trains otherwise than by steam locomotives as hereinafter required, the city of New York, acting by its board of estimate and apportionment, is hereby authorized and empowered to grant to the said railroad corporations, by suitable instrument or instruments in writing, the right to occupy and use for the purposes of their incorporation, during the term or terms of their corporate existence: the sub-surface of Park avenue from Forty-fifth street to the southerly line of Fifty-sixth street; the sub-surface of Park avenue, bounded and described as follows: beginning at the point where the southerly line of Fifty-sixth street intersects the easterly line of Park avenue and running thence in a northwesterly direction to a point in the centre line of Fifty-seventh street thirty-three feet easterly from the centre line of Park avenue; thence westerly along the centre line of Fifty-seventh street sixty-six feet; thence in a southwesterly direction to the point where the southerly line of Fifty-sixth street intersects the westerly line of Park avenue, and thence easterly to the place of beginning; Forty-fifth street, from the easterly line of Vanderbilt avenue to the westerly line of Depew place; the subsurface of Forty-sixth street, from the easterly line of Madison avenue to the westerly line of Lexington avenue; the sub-surface of Forty-seventh street,

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from the easterly line of Madison avenue to the westerly line of Lexington avenue; the sub-surface of Forty-eighth street, from a line described as follows: beginning at a point in the northerly line of Forty-eighth street, distant one hundred sixteen and sixty-seven one hundredths feet easterly from the easterly line of Madison avenue; thence southerly parallel with Madison avenue fifteen feet; thence in a southwesterly direction to a point in the southerly line of Forty-eighth street, distant sixty feet easterly from the easterly line of Madison avenue; to the westerly line of Lexington avenue; the sub-surface of Forty-ninth street, bounded and described as follows: beginning at a point in the northerly line of Forty-ninth street, distant fifty-three feet westerly from the westerly line of Park avenue, and running thence southerly parallel with Park avenue fifteen feet; thence in a southwesterly direction to a point in the southerly line of Forty-ninth street, distant sixty-five feet westerly from the westerly line of Park avenue; thence easterly along the southerly line of Forty-ninth street, to a point distant one hundred seventy-five feet westerly from the westerly line of Lexington avenue; thence in a northwesterly direction to a point in the northerly line of Forty-ninth street, distant two hundred and twenty-six feet
440 westerly from the westerly line of Lexington avenue; thence westerly to the place of beginning; and the sub-surface of Fiftieth street, between the westerly line of Park avenue and the following described line: beginning at the intersection of the northerly line of Fiftieth street with the easterly line of Park avenue, and running thence in a southeasterly direction to a point in the southerly line of Fiftieth street, distant sixty feet easterly from the easterly line of Park avenue. Nothing in this act contained shall be held to create a fee in said railroad corporations, or either of them, in or to the soil of said portions of said streets or of Park avenue, or any part thereof; nor to prevent the city of New York from occupying or using, or from permitting others to occupy or use any part of the said soil of said portions of said streets or avenue underneath the tracks and structures of said railroad corporations as shown on the plans and profiles provided for in section three of this act in any manner which shall not interfere with or endanger the occupation or use by the said railroad corporations.

§ 3. The New York Central and Hudson River Railroad company shall prepare plans and profiles of the viaducts or bridges required to carry the said streets, from Forty-fifth street to Fifty-sixth street, both inclusive, over the tracks of the said railroad and to carry the central portion of Park avenue from Forty-ninth street to Forty-fifth street over the said tracks, and on such plans and profiles shall be shown the grade or depth to which the tracks and structures of the said railroad corporations are to be constructed underneath such viaducts or bridges. The said bridges or viaducts shall in every case, except as hereinafter provided, be fifty feet in width. They shall be so constructed as to leave sufficient clearance above the tracks when de-
441 pressed as above provided, for the free passage and operation of the cars of the railroad companies using the said tracks, and the grade of the roadway of such viaducts or bridges shall not exceed four per centum. The New York Central and Hudson River Railroad company shall, within thirty days after the day on which this act shall take effect, submit the said plans and profiles in duplicate to the board of estimate and apportionment of the city of New York for its approval. If such plans and profiles are approved by the board of estimate and apportionment, such approval to be evidenced by a resolution adopted by a majority of the votes in said board, a copy of such resolution, duly certified by the mayor and comptroller of the city of New York, shall be endorsed upon, or annexed to, each copy of such plans and profiles; and one copy of such plans and profiles, so approved, shall be filed with the board of estimate and apportionment of the city of New York, and the other copy shall be delivered to the New York Central and Hudson River Railroad company. Upon such plans and profiles or any modifications thereof made as hereinafter provided being approved and filed as aforesaid, any and all alterations or changes in streets, avenues or public places, or in the grade or grades, width or widths thereof, and any and all modifications in or of the use of any existing street, avenue, highway or public place, or any part thereof, shown upon said plans and profiles shall be deemed to have been duly authorized, and the map or plan of the city of New York, shall be deemed to have been changed accordingly without any further act or proceeding by or on the part of the city of New York, or of any officer, board or

department thereof; and all such interests or easements in any lands of or owned by the said railroad corporations, or either of them, as shall be necessary or reasonably required for the construction of such viaducts or bridges shall thereupon be deemed to be vested in the city of New York.

442 The said board of estimate and apportionment shall thereupon cause three copies of such plans and profiles to be made and filed, one in the office of the register of the city and county of New York, one in the office of the corporation counsel of said city, and one in the office of the president of the borough of Manhattan of said city. The city of New York is hereby authorized to carry and maintain the said streets from Forty-fifth street to Fifty-sixth street, both inclusive, and the said central portion of Park avenue, over the tracks of the said railroad by viaducts or bridges in accordance with the said plans and profiles. The work of constructing such viaducts or bridges in accordance with the said plans and profiles approved as aforesaid by the board of estimate and apportionment, shall be done and performed by the New York Central and Hudson River Railroad company for and on behalf of and as contractor with the said city. For and in consideration of having the use of the portions of said avenue and of the said streets, hereinabove described, the said railroad corporations shall be at the entire expense of depressing said tracks, and shall pay to the city of New York the sum of twenty-five thousand dollars per annum so long as the said railroad corporations or either of them or their or either of their successors or assigns shall hold, occupy or use the same; and they shall also bear and pay all the expense of constructing said viaducts and bridges, excepting the said Park avenue viaduct, in excess of six hundred thousand dollars. The City of New York shall bear and pay to the New York Central and Hudson River Railroad company in full compensation for its work, labor and services to be rendered as herein provided the sum of six hundred thousand dollars of the cost and expense of constructing the viaducts and bridges carrying said streets from Forty-fifth street to Fifty-sixth street, both inclusive, over said tracks,

443 and also the entire expense of constructing the viaduct carrying Park avenue over the said tracks from Forty-ninth street to Forty-fifth street. The viaduct or bridge required to carry Forty-fifth street over said tracks

shall be constructed, either wholly or partly, north of the present north line of said street, and the said board of estimate and apportionment may, in its discretion, require that such viaduct or bridge, or any part thereof, shall be not to exceed seventy feet in width; and in that case the expense of constructing so much of such viaduct or bridge as shall be in excess of fifty feet in width shall be borne and paid by the city of New York. The portion of the expense to be borne and paid by the city of New York as aforesaid shall be paid to the said railroad company at such time or times and in such manner as shall, at or prior to the time of approving and filing the said plans and profiles as hereinbefore provided, be agreed upon by said railroad company and the board of estimate and apportionment of the city of New York. The said railroad corporations shall have the right to construct and maintain on the said viaducts or bridges such signal or other apparatus as may be required for the safe operation of their road and tracks; but all such apparatus shall be constructed and maintained in such manner as not to obstruct the roadways or sidewalks of such viaducts or bridges or unnecessarily disfigure them. The work of depressing the tracks and constructing the viaducts or bridges hereinbefore provided for shall be commenced within thirty days and completed within five years after the date on which the grant provided for in section two of this act shall be delivered, and the plans and profiles of the said viaducts or bridges shall be approved and filed by the board of estimate and apportionment as hereinbefore provided.

§ 4. From and after the expiration of five years after the approval and filing of the plans and profiles pro-
444 vided for in section three of this act and the delivery of the grant provided for in section two of this act, it shall not be lawful, except only in case of necessity, arising from the temporary failure of such other motive power as may be lawfully adopted, for any railroad corporation to operate trains by steam locomotives in Park avenue in the city of New York south of the Harlem river. If at any time after the expiration of the said five years trains shall be operated by steam locomotives in said Park avenue south of the Harlem river for a period of more than three days, the railroad corporation so operating such trains shall pay to the city of New York a penalty of five hundred dollars

for every day or part of a day during which such trains are so operated, unless the mayor of the city of New York shall certify to the necessity for the use of steam locomotives arising from the temporary failure of other motive power. Such certificate by the mayor may be revoked by him at any time. In any action or proceeding brought by the city of New York against a railroad corporation to recover such a penalty, the said certificate of the mayor shall be prima facie evidence of the facts therein stated, and the said railroad corporation shall be permitted to allege, as matter of defense, that the mayor's certificate was refused or revoked unreasonably or in bad faith, and in every such case the burden of establishing that defense shall be upon the defendant making that allegation. Such a certificate or the fact of its existence, or non-existence, shall not be evidence in any action or proceeding except an action or proceeding to recover a penalty as above provided. And the New York and Harlem Railroad company and its lessee, the New York Central and Hudson River Railroad company, so long as it remains such lessee, and the New York, New Haven and Hartford Railroad company, so long as it has any contract or other rights to operate its trains in Park avenue south of the Harlem river, and such other railroad companies
445 as may hereafter obtain permission therefor, are hereby authorized to run their trains by electricity, or by compressed air, or by any motive power other than steam and which does not involve combustion in the motors themselves through the tunnel and over the improvements made pursuant to chapter seven hundred and two of the laws of eighteen hundred and seventy-two, and pursuant to chapter three hundred and thirty-nine of the laws of eighteen hundred ninety-two and the acts amendatory thereof and supplemental thereto, and pursuant to this act, and over the route of the said railroad and in and upon the depot at Forty-second street, and the stations, switches, turn-outs, loops and sidings, and the approaches thereto, now or hereafter authorized by law. No power house constructed to supply power for the purposes of this act (except stations for the transformation of electric current) shall be placed on Manhattan Island more than two blocks from the water front, except with the consent of the board of estimate and apportionment.

§ 5. The New York and Harlem Railroad company, and its lessee, the New York Central and Hudson River Rail-

road company, are, and either of them is, hereby authorized and empowered to acquire from the city of New York, and the city of New York, acting by the board of estimate and apportionment of said city, is hereby authorized and empowered, in its discretion, to grant to said railroad corporations, or to either of them, any and all lands, or rights, interests or easements in lands in anywise owned, occupied or controlled by the city of New York, within the following territory, namely: beginning at the intersection formed by the westerly line of Lexington avenue and the southerly line of Fiftieth street; running thence westerly along the southerly line of Fiftieth street to the westerly line
446 of Park avenue; thence southerly along the westerly line of Park avenue to the northerly line of Forty-eighth street; thence westerly along the northerly line of Forty-eighth street to the easterly line of Madison avenue; thence southerly along the easterly line of Madison avenue to the northerly line of Forty-second street; thence easterly along the northerly line of Forty-second street to the westerly line of Lexington avenue; and thence northerly along the westerly line of Lexington avenue to the place of beginning, which may be necessary or required for the purpose of making any alterations, changes or additions, other than the alterations, changes and additions authorized by sections one, two and three of this act, in or to the yards and structures forming the terminals of the New York and Harlem Railroad company and the approaches thereto which may be necessary or required for the proper operation of trains in and through the Fourth or Park avenue tunnel and in and upon the said terminals and the approaches thereto by some motive power other than steam; or which may be necessary or reasonably required in the proper conduct of the business, or in the proper management, maintenance, operation or use of the railroads and property owned or leased, of said railroad corporations; provided however, that all such alterations, changes and additions, other than the alterations, changes and additions authorized by sections one, two and three of this act, in or to the said yard and structures, terminals and approaches thereto, in so far as they shall in any manner affect any public streets, avenues or places, shall be made in accordance with plans and profiles which shall be first submitted by the said the New York Central and Hudson River Railroad company to the board of estimate and apportionment of the city

of New York for its approval. If such plans and profiles are approved by the board of estimate and apportionment, such approval to be evidenced by resolution adopted
447 by a majority of the votes in said board, a copy of such resolution, duly certified by the mayor and comptroller of the city of New York, shall be indorsed upon, or annexed to, each copy of such plans and profiles; and one copy of such plans and profiles, so approved, shall be filed with the board of estimate and apportionment of the city of New York, and the other copy shall be delivered to the New York Central and Hudson River Railroad Company. Upon such plans and profiles or any modifications thereof made as hereinbefore provided, being approved and filed as aforesaid, any and all alterations or changes in streets, avenues or public places, or in the grade or grades, width or widths thereof, any and all modifications in or of the use of any existing street, avenue, highway or public place, or any part thereof, shown upon said plans and profiles, shall be deemed to have been duly authorized, and the map or plan of the city of New York shall be deemed to have been changed accordingly without any further act or proceeding by or on the part of the city of New York, or of any officer, board or department thereof, and the said board of estimate and apportionment shall thereupon cause three copies of said plans and profiles to be made and filed, one in the office of the register of the city and county of New York, one in the office of the corporation counsel of said city, and one in the office of the president of the borough of Manhattan, of said city. The city of New York acting by its said board of estimate and apportionment is hereby authorized and empowered, in its discretion, to agree with the New York Central and Hudson River Railroad company upon the consideration to be given or the amount of compensation to be paid to such city by such railroad corporation for such lands, rights, interests or easements in lands as may be granted by said city as in this section provided; and also to grant such lands, rights, interests, or easements in lands to such railroad corporation by proper instru-
448 ment in writing, either in perpetuity or for the period for which the same shall be required. Any pecuniary compensation agreed upon may either be a gross sum or it may be a sum or sums paid annually during the terms of such grant. The New York and Harlem Railroad company, and the New York, New Haven and Hartford

Railroad company, may be parties to such instrument. Such instrument shall be executed in as many parts as there shall be parties thereto, and on the part of the city of New York by its mayor and comptroller, under the corporate seal of the city of New York, and by the railroad corporation or corporations, parties thereto, under their corporate seals and by their proper officers. Such instrument may also include such other provisions in respect to carrying such plans and profiles into effect, not inconsistent with this act, as shall be agreed upon by and between the said board of estimate and apportionment and the said railroad corporations. When executed, one copy of such instrument shall be filed in the office of the comptroller of the city of New York, and one copy shall be delivered to each railroad corporation, party thereto. When executed and filed as aforesaid, said instrument shall be binding upon the city of New York and the railroad corporations, parties thereto, their successors and assigns.

§ 6. Upon the approval by the board of estimate and apportionment of any plans and profiles provided for in this act, the said city shall afford to said railroad corporations all such reasonable facilities as may be required to carry into effect the provisions of this act and any plans and profiles, and the provisions of any instrument, authorized by this act; and the proper officers and authorities of such city are hereby authorized, and it shall be the duty of such officers and authorities to take such appropriate action as may be necessary or reasonably required to carry the provisions of this act, and any such plans and profiles, and the provisions of any such instrument, into effect. All sewers, water
449 pipes, gas pipes, electric lines, wires, ducts or conduits in or under the portions of the streets and avenue described in section one of this act, or which may be in, under or over any streets or avenues shown on any such plans and profiles, shall be changed or relocated, at the expense of the said railroad corporations, in such manner and to such an extent as may be necessary or reasonably required to carry the provisions of section one of this act, and any such plans and profiles, and the provisions of any such instrument, into effect; but all such changes and relocations shall be made in a manner approved by the board of estimate and apportionment.

§ 7. The comptroller of the city of New York shall, from time to time, when authorized by the board of estimate and apportionment, and without the concurrence or approval of any other board or public body, prepare and issue corporate stock of the city of New York, for the purposes of bearing and paying such portion of the cost and expense of constructing the viaducts and bridges mentioned in section one of this act, as is provided to be borne and paid by the city of New York.

§ 8. Nothing in this act contained shall have the effect of limiting or impairing in any manner or to any extent the existing rights, privileges or franchises of the railroad corporations, or either of them, now using the said tunnel, terminals and the approaches thereto, or of depriving in any manner or to any extent such railroad corporations, or either of them, of the use and benefit of such rights, privileges and franchises, except in so far only as such rights, privileges or franchises shall be expressly limited or modified by this act or in and by any instrument executed in pursuance hereof; and the said railroad corporations, or either of them, are hereby authorized and empowered to acquire by purchase or by condemnation, from any owner, and to take, hold, occupy and use for the purposes of its incorporation all real estate in fee, and all property and all rights, interests and easements in real estate or other property which may be necessary or reasonably required in order to carry out and into effect the provisions of this act, and any plans and profiles, and the provisions of any instrument or instruments provided for in section three of this act. All the powers in and by this act conferred upon the city of New York, the board of estimate and apportionment of the city of New York, and upon the said railroad corporations, may be exercised from time to time as occasion may require, and any plans and profiles approved and filed as in this act provided may at any time be modified, but not in any manner inconsistent with this act, upon plans and profiles showing any such modifications being submitted, approved and filed in the manner in this act provided.

§ 9. The provisions of any acts and parts of acts, including the Greater New York charter, which are inconsistent with this act, and in so far only as they are inconsistent with this act, shall have no application to the rights, powers

and obligations conferred or created by or under authority of this act, or to any proceedings taken hereunder.

§ 10. The state of New York shall not be liable for injuries to persons or property in connection with any railroad or other construction which may be authorized under the provisions of this act, nor shall the state of New York be liable for any damages in any event for any act or omission of the city of New York, or of the railroad corporations, or of either of them, mentioned in this act.

§ 11. This act shall take effect immediately.

451 RELATORS' EXHIBIT NO. 13.

Witness Buckland.

This agreement, made this 24th day of July, 1907, by and between The New York Central and Hudson River Railroad Company, hereinafter called the Central Company, The New York, New Haven and Hartford Railroad Company, hereinafter called the New Haven Company, and The New York and Harlem Railroad Company, hereinafter called the Harlem Company:

Whereas, the trains of the New Haven Company enter the City of New York upon and over the tracks of the Harlem Company, under and pursuant to a certain contract, dated the 17th day of March, 1848, made by and between the Harlem Company and the New York and New Haven Railroad Company (the predecessor of the New Haven Company); and

Whereas, the Central Company is the lessee of the entire steam railroad property of the Harlem Company, including the Grand Central Depot, in the City of New York, under a lease dated the first day of April, 1873, for a term which will expire on the first day of April, 2274, subject to the provisions of said contract of March 17th, 1848; and

Whereas, the Central Company (for itself and the Harlem Company) and the New Haven Company now use the said Grand Central Depot, under the provisions of a certain agreement known as the "Tripartite Lease," dated the first day of November, 1872, as modified by four agreements supplemental thereto, dated, respectively, the 31st day of December, 1885, the 14th day of July, 1897, the 17th day of August, 1898, and the 23d day of March, 1899, all made by and between the parties hereto; and

Whereas, in and by the said lease dated the first day of April, 1873, the Harlem Company duly assigned and
452 transferred to the Central Company the said contract dated March 17, 1848, and the said "Tripartite Lease" dated November 1, 1872; and

Whereas, in order to provide facilities for the proper management and conduct of the business of the Central Company (for itself and as such assignee and lessee of the Harlem Company) and of the New Haven Company, and in order to carry out the provisions of Chapter 425 of the Laws of 1903 of the State of New York (copy of said act and of the act amendatory thereof being hereto annexed) it is necessary to make certain additions and changes in and about the Grand Central Depot, the yards and tracks connected therewith, and in and in respect to certain streets and avenues in the vicinity thereof;

Now, therefore, this agreement witnesseth:

That the parties hereto, in consideration of the premises, and of the mutual covenants herein contained, have agreed, for themselves, their successors and assigns, with each other as follows:

1. The words "Railroad Terminal," wherever hereinafter used, shall mean and include the land, and interests in land, and all improvements thereon (not including the distributing system hereinafter mentioned), and all rights in any ways on which said land may abut, as illustrated and described in Schedules I, II, III, IV and V, hereto attached and hereby made a part of this agreement.

Schedule I describes the land and interests in land and illustrates the boundaries thereof upon and within which said Railroad Terminal is located.

Schedule II describes and illustrates the Suburban Level, together with the approaches to and exits from such Suburban Level.

453 Schedule III describes and illustrates the Express Level, together with the approaches to and exits from such Express Level.

Schedule IV describes and illustrates the Street Level, together with the approaches to and exits from such Street Level.

Schedule V describes and illustrates cross-sections and longitudinal sections of the various levels covered by Schedules II, III and IV.

2. The Central Company covenants and agrees, at its own expense, to procure or furnish all land and interests in land and all rights in any ways on which the said land may abut not now owned by it or by the Harlem Company and required for the said Railroad Terminal, and to construct the said Railroad Terminal, as so described and illustrated, with all appurtenances connected therewith.

3. The Central Company, acting for itself and the Harlem Company, as hereinafter authorized, in consideration of the rents hereinafter reserved to be paid by the New Haven Company, and in consideration of the covenants on the part of the New Haven Company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease unto the New Haven Company, during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven Company, the use, in common with the Central Company, subject to all the provisions of this agreement, of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic,
454 provided, however, that the New Haven Company's right to the use thereof shall in no event exceed fifty (50) per centum of the maximum capacity of said Railroad Terminal, or of any part thereof.

4. The New Haven Company covenants and agrees with the Central Company to pay to the Central Company during the term of said lease dated April 1, 1873, and any renewals thereof, and thereafter to the Harlem Company, its successors or assigns, as compensation for the premises hereby demised, as described in Section 1, a proportion annually of $485,393.69, being interest on the cost of that part of the present terminal constructed under the agreements dated November 1, 1872, and December 31, 1885, and in addition thereto a proportion of interest reckoned at the rate of four and one-quarter (4¼) per centum per annum on actual net expenditures specified in sub-division (3) of Schedule VII hereof and made or to be made, as follows:

NOTE—See Supplemental Agreement dated November 10, 1913, adding words to Paragraph 3 in relation to construction, etc., of buildings for other than Railroad Terminal purposes.

(*a*) In acquiring land for the Railroad Terminal other than the land included in the said agreements of November 1, 1872, and December 31, 1885;

(*b*) In constructing said Railroad Terminal;

(*c*) In repairing, rebuilding or changing any part of the Railroad Terminal made necessary by act of God, fire, civil commotion, violence, casualty or operation of law;

(*d*) In complying with the provisions (other than the provisions for annual payments) of four agreements made by and between the Central Company, the Harlem Company and the City of New York, dated respectively June 19, 1903; December 4, 1903; April 28, 1905; and July 8, 1907; and of permit dated June 21, 1905, issued by
455 the President, Borough of Manhattan, in accordance with resolution of Board of Estimate and Apportionment adopted April 28, 1905, authorizing said agreement of same date; copies of which are hereto annexed;

(*e*) In making any other changes in or additions to the Railroad Terminal to which the New Haven Company shall have previously given its assent in writing;

The New Haven Company's proportion of said fixed charges shall in no event be less than $160,179.92 in each year.

These six items shall be payable quarterly.

The New Haven Company further covenants and agrees to pay to the Central Company, as compensation for said demised premises and in consideration hereof, a proportion:

(*f*) Of the annual net payments required by the terms of said agreements with the City of New York;

(*g*) Of all premiums for insurance which may be placed and of all taxes and assessments which may be levied upon the Railroad Terminal during the term hereby granted. The taxes and assessments and premiums for insurance on property now or hereafter appearing in said schedules, which may be assessed or insured as a whole, but of which separate portions may be occupied by the Railroad Terminal, the Central Company or the New Haven Company shall be divided between the parties occupying the same in proportion to the value of the use of the part so occupied;

These two items shall be payable annually;

(*h*) Of all net cost of maintenance, repairs and renewals of the Railroad Terminal;

(*i*) Of all net expenditures for the operation of the Railroad Terminal;

456 (*j*) Of all net expenditures required to contest, settle or pay claims, actions or judgments, for loss of or damage to property and for injury to or for the death of persons (except loss of or damage to the equipment of the parties hereto, any such loss or damage being provided for in Section 16 hereof) caused by the acts or omissions of the Terminal Manager, his agents or servants, while engaged in the maintenance or operation of the Railroad Terminal; agents and servants of the Terminal Manager, as used in this paragraph, means agents and servants employed by the Terminal Manager for the purpose of performing the duties imposed upon him by this agreement;

Such claims, actions or judgments may be settled by the party against whom such claim is made, action is brought or judgment is rendered when authorized in writing by the other party.

These three items shall be payable within thirty days after the Central Company shall render bills for the same.

The method of determining the proportion of the use of said Railroad Terminal, or of any part thereof, to which each company shall be entitled and the proportions of the aforesaid payments so to be made by the New Haven Company shall be by ascertaining for the month, quarter or year in question the proportion which the use of the Railroad Terminal by the New Haven Company bears to the entire use thereof, use to be based upon the number of cars and locomotives, excepting those performing Railroad Terminal service, entering the said Railroad Terminal. For the purposes of this computation each car and each locomotive shall be counted each time it shall enter the Railroad Terminal, including the cars of each Company hauled from Mott Haven yard, or other exterior storage yard, but not including the locomotives performing such haulage service,

457 None of the preceding provisions hereof shall apply to or include expenditures for switching and preparing cars for service, or any other special service which may be rendered at the request of the New Haven Company.

5. The Central Company shall provide tracks in those portions of its Mott Haven Yard illustrated and described

in Schedule VIII, hereto attached and hereby made a part of this agreement (the said portions being hereinafter referred to as Mott Haven Yard) for storing and cleaning such of the New Haven Company's cars as cannot be stored and cleaned in the Railroad Terminal to such extent as the Central Company can do so consistently with the requirements of its own business. This provision shall not be construed to require the Central Company to provide any facilities other than tracks for cleaning such cars, or to be at any expense in respect thereto.

The New Haven Company covenants and agrees to pay to the Central Company, as compensation for Mott Haven Yard, a proportion of interest reckoned at the rate of four and one-quarter (4¼) per centum per annum on $2,000,000, and also on all actual net expenditures made or to be made for the purposes specified in the following items (*a*) and (*b*):

(*a*) In repairing, rebuilding or changing any part of Mott Haven Yard made necessary by act of God, fire, civil commotion, violence, casualty or operation of law;

(*b*) In making any other changes in or additions to Mott Haven Yard to which the New Haven Company shall have previously given its assent in writing.

These interest items shall be payable quarterly.

The New Haven Company further covenants and agrees to pay to the Central Company, as compensation for Mott Haven Yard, a proportion of all actual net expendi-
458 tures made or to be made for the purposes specified in the following items (*c*), (*d*), (*e*) and (*f*):

(*c*) In the payment of all premiums for insurance which may be placed and in the payment of all taxes and assessments which may be levied upon Mott Haven Yard during the use thereof as herein provided; payable annually;

(*d*) In the maintenance, repairs and renewals of Mott Haven Yard;

(*e*) In switching cars in and upon Mott Haven Yard;

(*f*) In the payment of all sums required to contest, settle or pay claims, actions or judgments, for loss of or damage to property and for injury to or for the death of persons (except loss of or damage to the equipment of the parties hereto, any such loss or damage being provided for in Section 16 hereof), caused by the acts or omissions of the Terminal Manager, his agents or servants, while en-

gaged in the maintenance, operation or use of Mott Haven Yard.

These items shall be payable within thirty days after the Central Company shall render bills for the same.

The method of determining the proportion of the aforesaid payments to be made by the New Haven Company for the use of Mott Haven Yard shall be by ascertaining for the month, quarter or year in question, the proportion which the number of cars of the New Haven Company entering Mott Haven Yard bears to the entire number of cars (excluding all crossing movements on the wye track near Tower "YD," and excluding all freight movements on the track designated as "Lead to Yard B" and excluding all movements of cars from the interior repair yard of the Central Company shown on the map attached to Schedule VIII) entering Mott Haven Yard; it being understood
459 that all cars in either Company's service entering Mott Haven Yard are for the purposes of this section to be regarded as such Company's cars. Provided, however, that the proportion of interest at the rate aforesaid on $2,000,000 and of the charges specified in the foregoing items (*a*), (*b*), (*c*) and (*d*) of this section to be paid by the New Haven Company shall not be less than one-third (⅓) thereof.

In case, in the judgment of the directors of the Central Company, the Central Company shall require the Mott Haven Yard for its own business, then the New Haven Company's right to the use thereof shall terminate upon twelve months' written notice given to it by the Central Company. If such right shall be so terminated, the New Haven Company shall be entitled, on such terms as may be agreed upon, to haul its cars over the Harlem Company's Port Morris Branch between the main line near Melrose Station and the intersection with the tracks of the Harlem River and Portchester Railroad to reach any storage yard which the New Haven Company may establish.

The New Haven Company shall have the right to terminate its use, as herein provided, of Mott Haven Yard at any time upon giving twelve months' written notice to the Central Company of its intention to terminate such use. Upon termination by either party of the New Haven Company's use of the said Mott Haven Yard, as aforesaid, the payment of compensation therefor by the New Haven Company shall cease.

The New Haven Company also covenants and agrees to pay or assume such proportion of the expense of hauling cars to and from Mott Haven Yard, or other exterior storage yard, and of the expense of switching service in said Railroad Terminal, and of the expense of cleaning, lighting, heating, stocking, repairing, watering and icing cars and of any other service performed at the request of the New Haven Company, either in said Railroad Terminal or
460 in Mott Haven Yard as the service in each such case performed for the New Haven Company bears to the entire service in each such case performed; such expense of each and every such service (except tha. the expense of hauling cars to and from the Mott Haven Yard shall be limited to the cost of haulage only, on the Harlem Company's tracks, between the Railroad Terminal and Mott Haven Yard) shall include such interest charges, taxes, assessments, and premiums for insurance, repairs, renewals, maintenance, operation and the cost of contesting, settling or paying claims, actions or judgments for loss of or damage to property and for injury to or for the death of persons caused by the acts or omissions of the Terminal Manager, his agents or servants, while engaged in the performance of such haulage or service as may be paid, incurred or imposed in connection with each and any such service. The expenditures upon which such interest charges, taxes, assessments and premiums for insurance are to be paid are specified in sub-division (3) of Schedule VII hereof. All amounts payable to the Central Company under the provisions of this paragraph shall be payable within thirty days after the Central Company shall render bills for the same.

Agents and servants of the Terminal Manager, as used in this section, means agents and servants employed by the Terminal Manager for the purpose of performing the duties imposed upon him by this agreement.

All claims, actions or judgments mentioned in this section may be settled or paid by the party against whom such claim is made, action is brought or judgment is rendered when authorized in writing by the other party.

All the work and service performed for either party under the provisions of this section shall be done by or under the direction of the Terminal Manager, appointed as hereinafter provided.

461 6. The New Haven Company hereby covenants and agrees with the Central Company not to assign this lease or any interest therein, or any interest in or to the use of the said Railroad Terminal hereby demised, or to underlet the same or any part thereof without the previous written consent of the Central Company, and also not to use or occupy any part of the demised premises or privileges or permit the same to be used or occupied for any purpose other than those for which the same are herein stated to be demised; provided always, and these presents are upon the express condition, that if the New Haven Company shall at any time during the term of this lease make default in the performance of any of the covenants and agreements herein contained to or with the Central Company, and continue therein for a period of sixty days after notice thereof or demand in respect thereto in writing, then and in every such case, and although no advantage may have been taken of previous defaults, these presents and the term hereby granted shall, as to the New Haven Company, cease and become void at the option of the Central Company; and it shall be lawful for it to enter into and upon said premises and repossess itself thereof. The New Haven Company further covenants to and with the Central Company, that on the expiration or sooner determination of the term hereby granted, it will quietly leave, surrender and yield up the premises and privileges hereby demised to it, with the appurtenances, unto the Central Company.

The Central Company hereby covenants and agrees with the Harlem Company that all the provisions in respect to default contained in the said lease made by the Harlem Company to the Central Company and dated April 1, 1873, shall enure to the benefit of the Harlem Company and shall apply to and be binding upon the Central Company in case of any default on the part of the Central Company in respect to any of its covenants and agreements with the Har-
462 lem Company herein contained.

7. The New Haven Company covenants and agrees with the Central Company to accept and does hereby accept the demise and lease herein contained, and hereby covenants and agrees to keep, abide by, perform and observe all the terms and provisions hereof, including the provisions of any schedules now or hereafter hereto annexed and made a part of this agreement as herein provided.

8. And the Central Company covenants and agrees with the New Haven Company that the New Haven Company, paying the rent and sums of money hereinbefore mentioned and performing the covenants and agreements aforesaid on its part to be performed, shall and may at all times during the term hereby granted, peaceably have, hold and enjoy the premises herein demised to it, without any manner of trouble or hindrance of or from the Central Company or any one claiming under it.

9. In case of partial damage to or total destruction of the said Railroad Terminal, or of any part thereof, the Central Company covenants and agrees to rebuild and restore the same with all possible despatch. It is understood and agreed that so long as the present Grand Central Station buildings are used, each Company shall be entitled to and shall care for and maintain the same office space, for its exclusive use, to which it is entitled under existing agreements.

10. It is agreed that if either the New Haven Company or the Central Company shall hereafter desire to construct other railroad tracks up to and connect the same with said Railroad Terminal, such connection shall
463 only be made at the point or points and in accordance with plans which shall be agreed upon between the said Companies. The compensation provided for in this agreement to be paid by the New Haven Company for the use of the Railroad Terminal is based upon the fact of the continued use by the New Haven Company of the Harlem Road from the present connection near Woodlawn as an access to the Railroad Terminal. It is agreed that if any such new connection eliminates or diminishes the then use of the tracks of the Harlem Company by the New Haven Company, a new basis of compensation for said Railroad Terminal so long as the same shall be used by the New Haven Company may be demanded by the Central Company, based upon the value of the Railroad Terminal at the time when such connection may be made, and in case of disagreement such compensation shall be fixed by arbitration, as hereinafter provided.

11. None of the parties hereto shall, without the written consent of the others, at any time permit any other company to bring any cars or trains upon the said tracks be-

tween Woodlawn Junction and 42nd Street, or into the said Railroad Terminal.

12. The Railroad Terminal and so much of said distributing system as is located therein, exclusive of sub-station No. 1, and exclusive of the ducts, splicing chambers, manholes and appurtenances used for other than Railroad Terminal purposes, between said sub-station and 57th Street, shall be under the sole charge and direction of a Terminal Manager, who shall be appointed in writing by the Presidents of the Central and New Haven Companies, and shall be removable at any time upon written notice by either of said Presidents. In case the Presidents shall be unable to agree upon a successor, then and in that case he shall be appointed by arbitrators selected as herein-
464 after provided, and such appointee shall be removable in the same manner as if he had been appointed by the said Presidents. No removal of any Terminal Manager shall, without the consent of both Presidents, take effect within less than ten or more than fifteen days after the service of such notice. Except as provided in Sec-ion 5 hereof the Terminal Manager shall engage in no other service without the consent in writing of both of the said Presidents.

13. It shall be the duty of such Terminal Manager to do all things necessary for the proper maintenance, operation and management of the Railroad Terminal and of that portion of the distributing system described in section 12 hereof for the purposes to which they are devoted under the provisions hereof, subject to and in accordance with rules and regulations agreed upon from time to time by the said Presidents.

14. The Terminal Manager shall prepare, or cause to be prepared and certified, proper vouchers for all expenditures or disbursements made by him hereunder, which shall be audited and paid by the Central Company. He shall also prepare or cause to be prepared proper collection bills for all rentals or other compensation due from any person or corporation for the use of or accruing from any part of the said Railroad Terminal, which collection bills shall be audited and collected by the Central Company; and all such rentals or other compensation so received, and not belonging exclusively to either Company, shall be credited to the fixed charges or to the cost of maintenance and operation

of the said Railroad Terminal, as the same may be applicable.

All bills for the items mentioned in section 19 hereof in connection with the portion of the distributing system under the jurisdiction of the Terminal Manager shall be
465 rendered direct against the Central Company for the purpose of determining the proportion thereof to be paid by the New Haven Company, as provided in said section 19.

Any question as to the application of such rentals, or other compensation so received, shall be decided by the chief accounting officers of the Central and New Haven Companies.

15. The Central Company shall promptly render statements to the New Haven Company of all rentals and compensation and other sums herein provided to be paid by the New Haven Company, and also of all rentals or other compensation received by the Central Company from any person or corporation for the use of any part of the said Railroad Terminal, in sufficient detail to show the method of ascertainment, and shall at all times afford to the New Haven Company reasonable access to its records thereof for the purpose of verification.

16. Each of the parties hereto shall assume all liability for loss of or damage to property and for injury to or for the death of persons caused by its negligence or the negligence of its employees occurring in or upon said Railroad Terminal or said Mott Haven Yard, except that neither of the parties hereto shall be liable to the other for any damage to its equipment while in or upon said Railroad Terminal or said Mott Haven Yard, or while in transit to or from said Yard; employees, as used in this section, does not include agents and servants of the Terminal Manager as defined in Sections 4 and 5 hereof; equipment as used in this section does not include equipment provided or used by the Terminal Manager for the purpose of performing the duties imposed upon him by this agreement, but any loss of or damage to equipment so provided or used shall be borne as a part of the net expenditures for the
466 maintenance and operation of the Railroad Terminal.

17. The Central Company covenants and agrees to furnish electric current for the movement of its own trains

between Woodlawn and 42nd Street, and the necessary distributing system for current from the power station to contact shoes on the equipment of both of the parties, said distributing system to embrace the necessary transmission lines, sub-stations, storage batteries, working conductors and appurtenances thereto.

The New Haven Company covenants and agrees to furnish and deliver at the bus-bars of the Port Morris Power Station of the Central Company three-phase alternating current at twenty-five cycles per second, at all times sufficient for the requirements of its equipment between Woodlawn and 42nd Street, upon and under the condition that the regulation at the Port Morris end of the transmission lines shall be such that the power station of the New Haven Company at Cos Cob will run in parallel, satisfactorily and without electrical unbalance, with the power station of the Central Company at Port Morris. The New Haven Company shall derive the same benefits as the Central Company in the use of the said batteries of the Central Company; and upon and under the further conditions set forth in Schedule VII, hereto attached and hereby made a part of this agreement.

18. The New Haven Company shall have the use of said distributing system of the Central Company necessary for conducting the traffic of the New Haven Company, other than freight traffic, over the tracks of the Harlem Company from the junction at or near Woodlawn, to, into, upon and throughout the said Railroad Terminal;

467 The distributing system thus to be used jointly by both Companies is illustrated and described upon Schedule VI, hereto attached and hereby made a part of this agreement.

19. The New Haven Company further covenants and agrees with the Central Company to pay to the Central Company for the use of the distributing system between Port Morris power house and the contact shoes of its equipment using the same, as described in Sections 17 and 18, a proportion of interest reckoned at the rate of four and one-quarter (4¼) per centum per annum on the actual net expenditures made or to be made as follows:

(*a*) In constructing and completing the said distributing system shown upon Schedule VI;

(*b*) In repairing, rebuilding or changing any part of the said distributing system made necessary by act of God, fire, civil commotion, violence, casualty or operation of law;

(*c*) In making any other changes or additions to the said distributing system to which the New Haven Company shall have previously given its written consent.

These three items shall be payable quarterly.

The New Haven Company further covenants and agrees with the Central Company to pay the Central Company as compensation for the use of the said distributing system, a proportion:

(*d*) Of all premiums for insurance which may be placed, and of all taxes and assessments which may be levied upon the said distributing system during the term hereby granted, payable annually;

(*e*) Of all net cost of maintenance, repairs and renewals of the distributing system;

468 (*f*) Of all net expenditures for the operation of the said distributing system.

These two items shall be payable monthly.

The method of determining the proportions of the aforesaid payments to be made by the New Haven Company to the Central Company shall be by ascertaining for the month, quarter or year in question, the proportion which the use by the New Haven Company bears to the entire use of such distributing system, as described in Schedule VII.

Provided, however, that the proportion of such charges specified in (*a*), (*b*), (*c*) and (*d*) of this section to be paid by the New Haven Company shall not be less than one-third (⅓) thereof.

(1) Each party shall assume all liability for loss of or damage to property, and for injury to or for the death of persons, proximately caused by its own negligence or by the negligence of its own employees (other than employees engaged in maintaining and operating said distributing system) and if any accident shall be so proximately caused the party liable therefor shall bear all consequent loss, damage and injury incident to the use of said distributing system.

(2) Each party shall assume all liability for loss of or damage to property, and for injury to or for the death of persons in or upon its trains or otherwise in its custody, proximately caused by or by the use of said distributing

system or by the negligence of any employee engaged in maintaining or operating said distributing system.

(3) All liability for loss of or damage to property and for injury to or for the death of persons, whether or
469 not upon the trains or otherwise in the custody of either party, incurred while using said distributing system, and proximately caused by the negligence of both companies or of one or more employees of each of them (other than employees engaged in maintaining or operating said distributing system), and all liability for loss of or damage to property and for injury to or for the death of persons not in or upon the trains or otherwise in the custody of either of them and proximately caused by or by the use of said distributing system or by the negligence of any employee engaged in maintaining or operating said distributing system, shall be assumed by the parties hereto as a part of the expense of the operation of said distributing system.

Nothing in the three preceding paragraphs shall impose upon either party any liability for loss of or damage to the equipment of the other party while in or upon said Railroad Terminal or said Mott Haven Yard or while in transit to or from said Mott Haven Yard as provided in Section 16 hereof.

Should either the New Haven Company or the Central Company fail to furnish all of the current needed to meet its requirements as provided in Section 17, the other Company shall have the right to supply the deficiency, and the current so supplied shall be paid for at the rate named in Schedule VII.

20. Neither of the parties hereto shall assign this contract or any interest thereunder to any railroad company which may be a rival or competing line to the other, without the written consent of such other party.

470 21. The schedules hereinbefore referred to are of even date herewith and are signed by the New Haven Company and by the Central Company. The said schedules may at any time hereafter be modified or abrogated by mutual consent, and new schedules, similarly signed, may be added hereto; and any such new schedules shall form a part hereof.

22. In case of disagreement between the parties hereto as to the meaning or construction of this agreement, or any

part thereof, or as to the respective rights and obligations of the parties hereto thereunder, or in case the representatives of the Central Company and the New Haven Company are unable to agree as to any matter which is left to their determination, then such points of difference or matter as to which there may be such failure to agree shall be submitted to three arbitrators, one to be chosen by the President of the Central Company, one by the President of the New Haven Company, and the third to be selected by the two so chosen; and the said three arbitrators, or a majority of them, shall decide with all reasonable despatch the issues before them, and such decision shall be a condition precedent to the enforcement of any right of action under this agreement. The expense of such arbitration shall be borne equally by the parties hereto.

23. All the rights and obligations of the parties hereto granted, created, assumed or imposed in and by said Tripartite Lease, dated the first day of November, 1872, and the said four agreements supplemental thereto, dated respectively the 31st day of December, 1885, the 14th day of July, 1897, the 17th day of August, 1898, and the 23rd day of March, 1899, shall be terminated on the day on which this agreement takes effect.

24. The Harlem Company being the owner of a part of the lands required for the said Railroad Terminal,
471 and having heretofore in and by said lease dated the first day of April, 1873, demised and let all of the said lands owned by it to the Central Company, subject to the said Tripartite Lease and said agreement dated the 17th day of March, 1848, and having in and by said lease assigned and transferred to the Central Company the said Tripartite Lease and said agreement, in consideration of the covenants of the Central Company in the said lease dated the first day of April, 1873, contained: Now, the Harlem Company in consideration of the covenants on the part of the Central Company herein contained, hath demised, let and leased and by these presents doth demise, let and lease unto the Central Company, during the term of its charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said Central Company, all of the said lands required for the said Railroad Terminal now owned by the Harlem Company, and hereby gives and grants to the Central Company the right to make all of the covenants and agreements

herein contained by and on the part of the Central Company to and with the New Haven Company, and hereby consents to all the terms and provisions hereof; in consideration whereof the Central Company hereby covenants and agrees with the Harlem Company that it will carry out, fulfill and perform each and every of the conditions herein imposed upon the Harlem Company or by it agreed to be fulfilled or performed; it being understood that in case of the termination of said lease of the Harlem Company to the Central Company dated the first day of April, 1873, the Harlem Company shall thereupon assume all of the obligations and have all of the rights of the Central Company under this agreement.

25. All the covenants and agreements herein contained shall be and remain in force during the term of the demise contained in section 3 hereof, and except as herein specifically provided, the covenants herein contained
472 shall be binding upon and shall enure to the benefit of the successors and assigns of the parties hereto, respectively.

26. Nothing herein contained shall impair any of the rights of either of the parties hereto, under the agreement between the New York and Harlem Railroad Company and the New York and New Haven Railroad Company, dated March 17, 1848, as modified by arbitration, under date of June 27, 1856, and by arbitration under date of January 19, 1861, copy of which is hereto annexed.

In Witness Whereof, each of the parties hereto has caused this agreement to be executed in triplicate and its corporate seal to be hereto affixed the day and year first above written.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By W. H. NEWMAN,
President.

Attest:
[SEAL.] D. W. PARDEE,
Secretary.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
By C. S. MELLEN,
President.

Attest:
[SEAL.] JOHN G. PARKER,
Secretary.

NEW YORK AND HARLEM RAILROAD COMPANY,
By W. K. VANDERBILT,
President.

Attest:
[SEAL.] D. W. PARDEE,
Secretary.

473 STATE OF NEW YORK,
County of New York, ss:

On the 8th day of January, in the year 1909, before me personally came William H. Newman, to me known, who, being by me duly sworn, did depose and say that he resided in the Borough of Manhattan, City of New York; that he is the President of The New York Central and Hudson River Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] ALBERT B. QUENCER,
Notary Public, N. Y. County.

474 STATE OF NEW YORK,
County of New York, ss:

On the 8th day of January, in the year 1909, before me personally came Charles S. Mellen, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New Haven, State of Connecticut; that he is the President of The New York, New Haven and Hartford Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] ALBERT B. QUENCER,
Notary Public, N. Y. County.

475 STATE OF NEW YORK,
County of New York, ss:

On the 8th day of January, in the year 1909, before me personally came William K. Vanderbilt, to me known, who, being by me duly sworn, did depose and say that he resided in Oakdale, Long Island, N. Y.; that he is the President of the New York and Harlem Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] ALBERT B. QUENCER,
Notary Public, N. Y. County.

476 RELATORS' EXHIBIT NO. 14.

Witness Buckland.

The New York Central and Hudson River Railroad Company, The New York, New Haven and Hartford Railroad Company, and New York and Harlem Railroad Company.

Agreements, Dated November 10, 1913, *Adding Words to Paragraph* 3 *of the Grand Central Terminal Agreement of July* 24, 1907, *in Relation to Construction, etc., of Buildings for Other Than Railroad Terminal Purposes.*

477 Supplemental Agreement, made this tenth day of November, 1913, between The New York Central and Hudson River Railroad Company, (hereinafter called the "Central Company"): The New York, New Haven and Hartford Railroad Company, (hereinafter called the "New Haven Company"), and New York and Harlem Railroad Company, (hereinafter called the "Harlem Company"):

Whereas, the parties hereto heretofore entered into an agreement bearing date the 24th day of July, 1907, with relation to the Grand Central Terminal, in the Borough of Manhattan, City of New York, New York, referred to in said agreement and herein as the "Railroad Terminal"; and

Whereas, the Central Company and the New Haven Company have heretofore expended large sums of money in the construction of buildings within the limits of the Railroad Terminal, all or portions of which said buildings are leased or intended to be leased to outside parties, and it is intended in the future to construct other buildings within the limits of the Railroad Terminal, all or portions of which said buildings are also to be leased to outside parties; and

Whereas, it is desired to express more fully the intent of the parties hereto as to the right of the New Haven Company and the Central Company with respect to the construction, maintenance and use of such buildings and with respect to the rentals accruing from the leasing of such buildings or portions thereof;

Now, therefore, this agreement witnesseth:

That the parties hereto, in consideration of the premises, and of the mutual promises herein contained, have
478 agreed for themselves, their successors and assigns, with each other as follows:

That the following words shall be added at the end of Paragraph 3 of said agreement of July 24th, 1907, expressing a demise and lease to the New Haven Company with the same effect as if they had formed a part of said agreement at the time of the original execution thereof by the parties hereto, to wit:

"It is understood and agreed that the use of the Railroad Terminal demised by this paragraph to the New Haven Company shall include the right on the part of the New Haven Company to join with the Central Company, in accordance with agreements relating thereto, made, or from time to time to be made, by and between the Central Company and the New Haven Company, in the construction, holding, maintenance and leasing of buildings, or parts thereof (other than such buildings or parts thereof as form a part of the Railroad Terminal to be constructed by the Central Company as hereinafter provided) upon the land included within the Railroad Terminal. In every such building, together with the right of support thereof, toward the construction of which the New Haven Company shall furnish or contribute money, and until it is reimbursed therefor, the New Haven Company shall have and own an undivided interest which shall bear the same proportion to

the entire building as the amount of money furnished or contributed by the New Haven Company, and for which it has not been reimbursed, bears from time to time to the entire cost of the construction of such building. At the time when the New Haven Company shall be fully reimbursed for all moneys furnished or contributed by it for or toward the construction of any such building, with interest at such rate as shall have been agreed upon, such undivided interest of the New Haven Company shall cease. In all cases in which the New Haven Company and the Cen-
479 tral Company shall join in the construction of any such building or buildings, the rentals to be credited to the fixed charges or to the cost of maintenance and operation of the Railroad Terminal under the provisions of Paragraph 14 of this agreement shall include all rentals accruing from the leases of the buildings or parts of buildings so constructed, except such rentals as by agreement between the New Haven Company and the Central Company shall be paid over to the New Haven Company and the Central Company or either of them as a proper return for the moneys advanced by such party to provide for the construction of any said buildings. It is expressly understood and agreed that, to facilitate the raising of money for the construction of such buildings, any rights of the New Haven Company or of the Central Company in such buildings or any of them or any parts thereof and in or to any rentals accruing from the lease of such buildings or any of them or any parts thereof, may be, by agreement between the Central Company and New Haven Company, at any time hereafter, conveyed, assigned or pledged to one or more corporations, associations or trustees."

In witness whereof, each of the parties hereto has caused this supplemental agreement to be executed in triplicate and its corporate seal to be hereunto affixed the day and year first above written.

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
By A. H. SMITH,
Senior Vice-President.

Attest:
[SEAL.] D. W. PARDEE,
Secretary.

480 THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
By J. H. HUSTIS,
President.

Attest:
[SEAL.] A. E. CLARK,
Secretary.

NEW YORK AND HARLEM RAILROAD COMPANY,
By W. K. VANDERBILT,
President.

Attest:
[SEAL.] D. W. PARDEE,
Secretary.

Approved on behalf of the New York Central and Hudson River Railroad Company and the New York and Harlem Railroad Company, December 27th, 1913.
W. H. NEWMAN,
LEWIS CASS LEDYARD,
Committee.

481 STATE OF NEW YORK,
County of New York, ss:

On the 27th day of December, in the year 1913, before me personally came Alfred H. Smith, to me known, who, being by me duly sworn, did depose and say that he resided in Chappaqua, New York; that he is the Senior Vice-President of the New York Central and Hudson River Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[SEAL.] CLARENCE R. DUGAN,
Notary Public, New York Co., No. 825.

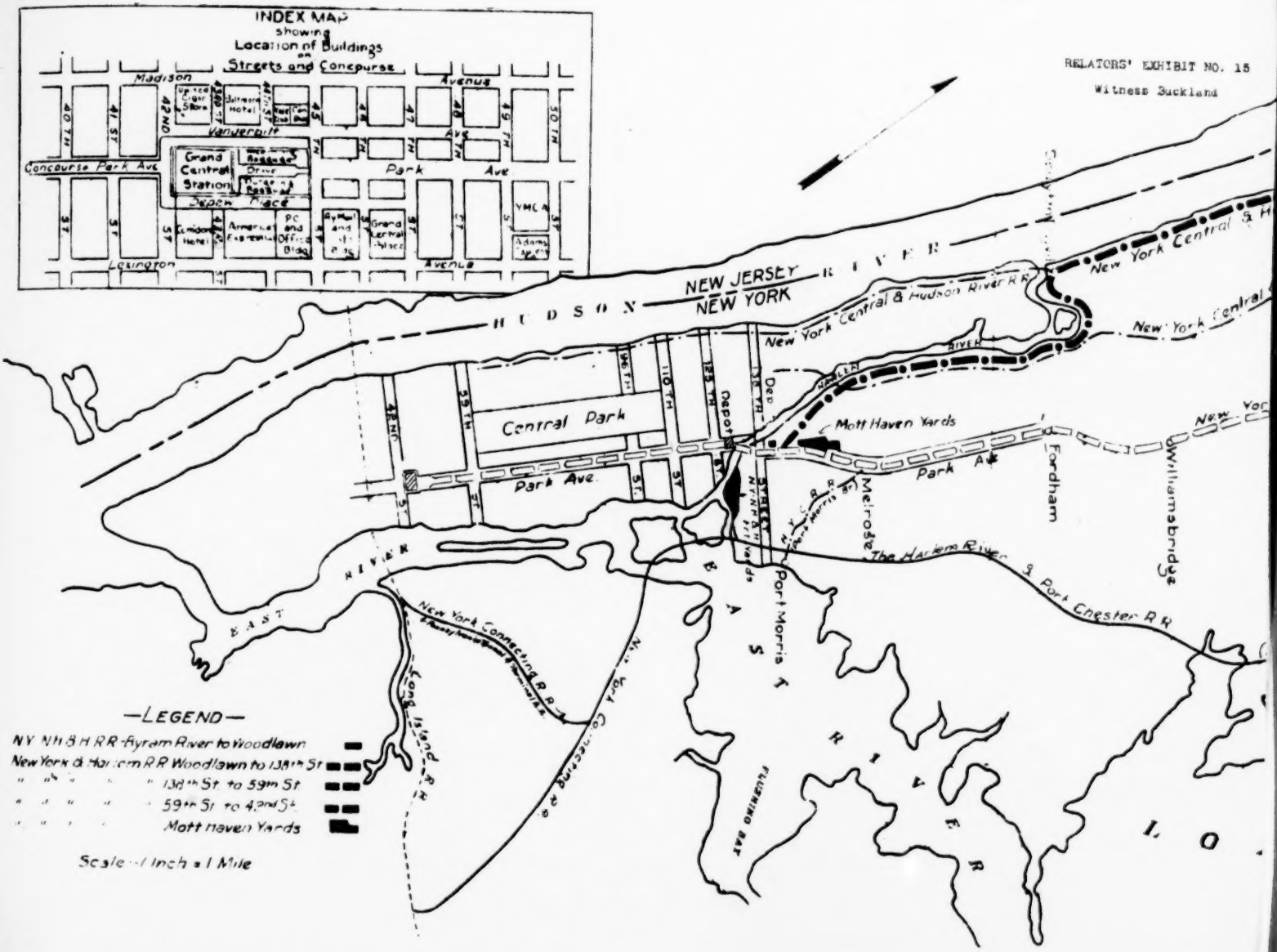
New York Register No. 5025.

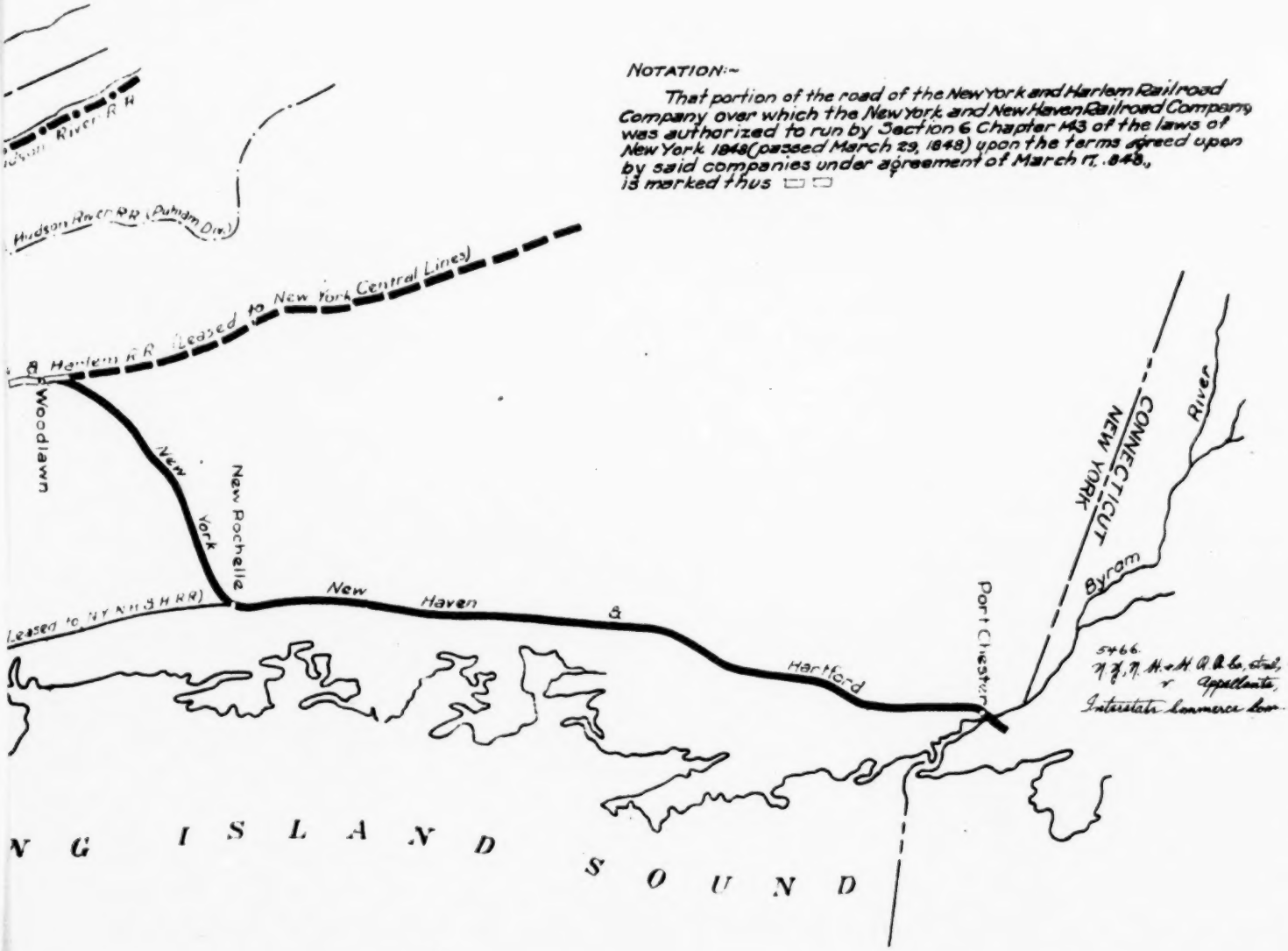
482 STATE OF NEW YORK,
County of New York, ss:

On the 27th day of December, in the year 1913, before me personally came James H. Hustis, to me known, who, being

RELATORS' EXHIBIT NO. 15

Witness Buckland





NOTATION:-

That portion of the road of the New York and Harlem Railroad Company over which the New York and New Haven Railroad Company was authorized to run by Section 6 Chapter 143 of the laws of New York 1848 (passed March 29, 1848) upon the terms agreed upon by said companies under agreement of March 17, 1848, is marked thus ▭ ▭

5466.
N.Y.N.H. & H.R.R. Co. et al,
v. Appellants,
Interstate Commerce Com.

by me duly sworn, did depose and say that he resided in New Haven, Conn.; that he is the President of the New York, New Haven and Hartford Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[SEAL.] FRANK E. HALL,
Notary Public.

New York County No. 1518.
New York Registry No. 5061.
Term expires March 30, 1915.

483 STATE OF NEW YORK,
County of New York, ss:

On the 6th day of January, in the year 1914, before me personally came William K. Vanderbilt, to me known, who, being by me duly sworn, did depose and say that he resided in Oakdale, Long Island, that he is the President of the New York and Harlem Railroad Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[SEAL.] J. M. O'MAHONEY,
Notary Public, New York Co., N. Y., No. 2911.

New York Co. Register No. 5074.
My commission expires March 30, 1915.

(Here follows diagram marked page 484.)

485 RELATORS' EX. #16.

Witness Buckland.

Agreed true copy of Chap. 516, Acts of Mass., 1896.
P. M. C.,
For Relators.
R. E. F.,
For Respondent.

Chap. 516.

An Act to Provide for a Union Station for Passengers on Railroads Entering the Southerly Part of the City of Boston.

Be it enacted, etc., as follows:

The Boston Terminal Company Incorporated.

Section 1. Charles F. Choate, William Bliss, William T. Hart, Royal C. Taft, and Charles P. Clark, their associates and successors, are hereby make a corporation by the name of The Boston Terminal Company, with power to construct and maintain a union passenger station in the southerly part of the city of Boston, and to provide and operate adequate terminal facilities for the several railroad companies hereinafter authorized to hold the stock of said terminal company, and for the accommodation of the public in connection therewith.

Capital Stock.

Section 2. The capital stock of said corporation shall be five hundred thousand dollars, and the Boston and
486 Albany Railroad Company, the New England Railroad Company, the Boston and Providence Railroad Corporation, the Old Colony Railroad Company, and the New York, New Haven and Hartford Railroad Company, being lessee of the Old Colony Railroad Company, may each subscribe for and hold one fifth portion of the said capital stock. The corporation may by by-laws regulate the terms and conditions upon which its stock may be transferred. All said capital stock shall be paid in in cash by said railroad companies before the corporation takes any land under the provisions of this act.

Board of Trustees, Appointment, etc. To Elect Certain Officers, etc.

Section 3. The immediate government and direction of the affairs of said terminal company shall be vested in a board of five trustees, to be appointed at once on the organization of said company, one of whom shall be appointed by

each of said railroad corporations from its directors, to hold office as such trustee at the pleasure of the corporation by whom he is so appointed; any vacancy to be filled in like manner. The trustees shall elect one of their number to be chairman, and may elect another to be vice chairman, and shall choose a clerk who shall be sworn, and a treasurer who shall give bond in the sum required by the by-laws, with surety, for the faithful discharge of his duties.

May Issue Bonds. Bonds to be Approved, etc. Railroad Companies to be Liable for Certain Deficiencies, etc.

Section 4. Said terminal company, to provide means to carry out the purposes of this act, may from time to time issue coupon or registered bonds, in sums of not less than one hundred dollars each, payable at periods not exceeding one hundred years from the date thereof, bearing interest not exceeding four per cent. per annum, payable annually, semi-annually, or quarterly, to such an amount as may be necessary and as may be approved by the board of railroad commissioners. No bonds shall be issued unless approved in writing by at least three of the trustees of the corporation. Said corporation may mortgage or pledge as security for the payment of such bonds or of any bonds given in renewal thereof, a part or all of its real estate and other property. In case any mortgage made to secure bonds issued by the terminal company under the provisions of this act shall be foreclosed, and there shall not be thereby realized a sum sufficient to pay all the then outstanding bonds secured by said mortgage, said railroad companies shall be held liable to pay any deficiency in the amount required to pay all of said bonds and the interest
487 thereon in such proportions as may be just and equitable, having regard to the use which they or their lessees may have respectively had of the mortgaged property; and the supreme judicial court shall have jurisdiction in equity to determine such proportions and to compel such payments to be made, so that the full payment of the principal and interest of bonds issued under the provisions of this act by the terminal company shall not in any event fail. Any such mortgage shall be made to a trustee or trustees approved in writing by the board of savings banks

commissioners, and savings banks and institutions for savings may invest in such bonds when so secured.

May Take Certain Land. Provisos.

Section 5. Said terminal company may purchase or otherwise take in fee the whole or any part of the land in the city of Boston within the following limits, that is to say:—Beginning at the easterly corner of Atlantic avenue and a way called Summer street, thence bounded by the northerly line of said way extended to Fort Point channel; thence by said channel to Broadway; thence by Broadway to the westerly line of Lehigh street; thence by the westerly line of Lehigh street and by South street, Kneeland street and the westerly line of Cove street extended to Federal street; thence by the westerly line of Federal street to Summer street, and thence across public ways to the point of beginning; and may discontinue and occupy for its purposes all streets and rights of way embraced within the land so acquired: *provided, however,* that no land belonging to the Boston and Albany Railroad Company or to the Old Colony Railroad Company shall be taken by said terminal company without the consent of the directors of both of said railroad companies; and *provided, further,* that the portion of Federal street to be discontinued under the provisions of this act shall not be closed to travel prior to the completion of the extension of Summer street and the extension of Dorchester avenue hereinafter provided for, and the opening of the same to travel, unless a temporary provision for the travel over such portion of Federal street, so that the travel shall not be interrupted, is provided for in some manner approved by the mayor, such temporary accommodation to continue until the completion of said Dorchester avenue and Summer street, and *provided, further,*
that if said terminal company shall take for the pur-
488 pose of this act any part of the land within the limits
before described, owned by the Boston Gas Light Company, it shall take the whole of the land owned by said Boston Gas Light Company within said limits.

Company to Organize; Plans, etc., for Construction of a Union Passenger Station to be Prepared, etc. Plans to be Approved by Railroad Commissioners, etc.

Section 6. Said terminal company, upon the passage of this act, shall forthwith organize, and thereupon the trus-

tees thereof shall at once prepare plans and specifications for the construction of a union passenger station upon land herein-above authorized to be taken, adequate for the business to be accommodated, and of such construction as may be best adapted for the accommodation of the companies and of the public, exhibiting its form, dimensions of walls, rooms and partitions, and arrangements, and its location with reference to the adjacent streets and to the tracks of all said railroad companies located or proposed to be located in the vicinity thereof, and any projections over adjacent streets, so far as practicable, and shall submit said plans when completed to the mayor of Boston for his approval, who shall forthwith approve or disapprove them in writing. The trustees shall then at once submit said plans to the board of railroad commissioners for its approval, and said board, after notice to the railroad companies and to the mayor of Boston, and a hearing, shall approve the plans, or order such changes thereof as in their judgment the safety and convenience of the public and the interests of all said railroad companies require. Said station shall be constructed by the terminal company according to the plans thus approved by the board of railroad commissioners, or as the same may be changed, as hereinafter provided. The supreme judicial court, or any justice thereof, shall have jurisdiction in equity to enforce the provisions of this section.

Location of Lands to be Filed, etc. Trustees May Propose Changes in Plans, etc.

Section 7. Said terminal company, within three months after the plans of said union station are approved as above-provided, shall file in the registry of deeds for the county of Suffolk a location of the lands hereby authorized to be taken by it, or of such part thereof as it then deems it necessary to acquire, and shall proceed with all reasonable diligence to the construction and completion of such union passenger station according to said plans. But the trustees of the terminal company may from time to time propose to the mayor of Boston any changes in said plans, and the mayor shall forthwith approve or disap-
489 prove such changes in writing, and the trustees shall then at once submit such changes to the board of

railroad commissioners, who, after notice to the mayor and to the railroad companies, and a hearing, shall approve the same, or order such modifications thereof as in their judgment the safety and convenience of the public and the interests of all said railroad companies require.

Rules and Regulations for the Use of Union Passenger Station and Grounds.

Section 8. Said terminal company, upon the completion of said union passenger station and grounds, shall make reasonable rules and regulations for their use; and the board of railroad commissioners, upon the application of either of said companies or of the mayor of the city of Boston, and a hearing may, from time to time, make any modification of such rules and regulations which they may deem just and reasonable. Such rules and regulations shall be binding upon all corporations and persons in the use of said station and grounds, and shall be enforced by railroad police officers who may be appointed upon the application of the terminal company, in the same manner and with the same powers in said station and grounds, and with like liability of the terminal company for their acts, as railroad police officers under the general law.

Railroad Companies to Use Station Upon its Completion, etc.

Section 9. All said railroad companies upon the completion of said station shall use the same, and the terminal facilities provided by said terminal company on the land herein-above authorized to be taken, for all of their terminal passenger business in Boston, instead of the passenger terminals now used by them, and the supreme judicial court, or any justice thereof, shall have jurisdiction in equity to enforce this provision; but said terminal company may contract with either of said railroad companies for the use of such separate and specified portion or portions of the terminal station hereinafter provided for as may be reasonably necessary for their respective use.

Railroad Companies to Pay for Use of Station, etc. Proportion in which Companies Shall Pay. Proportions May be Revised, etc.

Section 10. Said railroad companies hereby required to use said union station shall pay to the terminal company

for such use, in monthly payments, such amounts as may be necessary to pay the expenses of its corporate administration and of the maintenance and operation of said station, and of the facilities connected therewith and owned by said terminal company, including insurance and all repairs, all taxes and assessments which may be required to be paid by said terminal company, the interest upon its
490 bonds or other obligations issued under the provisions of this act as the same shall become payable, and a dividend, not to exceed four per cent. per annum, upon its capital stock. Each of said railroad companies shall pay for such use of said station and facilities in the proportion in which it has the use thereof, the same to be fixed by the written agreement of all of said railroad companies before the completion of said station; and in case they fail thus to agree the board of railroad commissioners shall determine such proportions upon the application of said terminal company or of any of the railroad companies. Said proportions as thus fixed, either by agreement or by the decision of the board of railroad commissioners, may be revised and altered from time to time, either by the written agreement of all of the railroad companies at any time, or by the board of railroad commissioners upon like application, at intervals of not less than three years. The decisions of the board of railroad commissioners fixing said proportions of payments shall be final and binding upon all of said railroad companies, and the payments required to be made by them respectively to said terminal company either by such agreement or decisions shall be deemed a part of their operating expenses, and the supreme judicial court or any justice thereof shall have jurisdiction in equity to compel such payments to be made, either by mandatory injunction or by other suitable process.

Changes to be Made in Streets, etc. Proviso.

Section 11. In order to render the union station and passenger facilities herein provided to be constructed and maintained by the terminal company accessible and convenient for public use, the following changes shall be made by the board of street commissioners of the city of Boston in its streets and public places, to wit:—Lehigh street between South street and Broadway bridge shall be discontinued; Cove street shall be widened to the width of at least

one hundred feet, and extended at the width to which it may thus be widened to Summer street extended as required by this act; all of Federal street between Essex street and Federal street bridge which is not embraced within land which the terminal company is authorized to take, or which is not included in the above widening or extending of Cove street, shall be discontinued; Summer street shall be extended at least one hundred feet in width from Purchase street to the harbor commissioners'
491 line; Dorchester avenue shall be extended over Federal street bridge, and thence laid out at a width of ninety-two feet, upon land which the terminal company shall convey to the city without compensation, substantially parallel with the harbor commissioners' line, to Summer street so extended, and said terminal company shall convey in fee to the city such of its land acquired under this act as may be required by said street commissioners for said widening and extension of Cove and Summer streets, at its actual reasonable cost to said terminal company; Albany street and Broadway, and the bridges thereof over the Boston and Albany tracks, shall be changed so as to enable the two southerly main tracks and two additional main tracks south of them to be extended thereunder to the grounds of the terminal company. Said board of street commissioners shall discontinue, widen, and lay out said streets in such manner as may be approved by the mayor, and said city shall construct said streets and make said changes in said bridges as above-specified; *provided, however,* that the terminal company shall construct a bridge for the accommodation of foot passengers or a subway from the end of the new Cove street to meet Dorchester avenue at a convenient place, as determined by the railroad commissioners and street commissioners, sitting jointly, whenever said commissioners deem it necessary. The supreme judicial court or any justice thereof shall have jurisdiction in equity to enforce the provisions of this section.

Certain Land May be Released, etc.

Section 12. Said terminal company and the city of Boston may each release to the other any land which may be necessary for the uses of said terminal company, or for public ways or places respectively, upon such terms as may

be agreed upon between the trustees of the terminal company and the major and the board of street commissioners of said city; and said railroad companies may convey to each other any land or interest in land in Boston owned by them respectively, which it may be found proper to transfer for convenience in the approach to or use of the station and grounds of said terminal company.

City of Boston May Issue Notes, Bonds, etc.

Section 13. For the purpose of paying any expenses incurred by the city of Boston in carrying out the provisions of this act the city council of said city may from time to time, on the request of the mayor, authorize the
492 city treasurer to issue notes, bonds or scrip of said city to the amount specified in any such request, for a term or terms not exceeding thirty years from the date thereof, provided the sum total of such amounts shall not exceed two million dollars. If the city council shall not within thirty days after a request from the mayor authorize the loan requested, then the city treasurer of said city shall, on the request of the mayor, issue and sell notes, bonds or scrip of said city, for the purpose of paying such expenses, which shall be outside of the debt limit, and shall be for such terms not exceeding five years, as said treasurer shall determine, provided that the amount of said loan shall not exceed two million dollars. All such notes, bonds or scrip, whether inside or outside of the debt limit, shall be negotiable, shall bear interest payable semi-annually, shall be registered or with interest coupons attached, and shall be sold and disposed of in such manner, at such times, at such prices, in such amounts, and at such rates of interest not exceeding four per cent. per annum, as said treasurer may determine; and any premiums received by said treasurer in the sale of any of said notes, bonds or scrip shall, if the notes, bonds or scrip are issued for a term of ten years or more, be paid to the board of commissioners of sinking funds of said city, and be by them placed in the sinking fund for the redemption of the loan created; otherwise they shall be applied to the payment of said notes, bonds or scrip, or to the payment of said expenses, as the mayor may determine.

one hundred feet, and extended at the width to which it may thus be widened to Summer street extended as required by this act; all of Federal street between Essex street and Federal street bridge which is not embraced within land which the terminal company is authorized to take, or which is not included in the above widening or extending of Cove street, shall be discontinued; Summer street shall be extended at least one hundred feet in width from Purchase street to the harbor commissioners'
491 line; Dorchester avenue shall be extended over Federal street bridge, and thence laid out at a width of ninety-two feet, upon land which the terminal company shall convey to the city without compensation, substantially parallel with the harbor commissioners' line, to Summer street so extended, and said terminal company shall convey in fee to the city such of its land acquired under this act as may be required by said street commissioners for said widening and extension of Cove and Summer streets, at its actual reasonable cost to said terminal company; Albany street and Broadway, and the bridges thereof over the Boston and Albany tracks, shall be changed so as to enable the two southerly main tracks and two additional main tracks south of them to be extended thereunder to the grounds of the terminal company. Said board of street commissioners shall discontinue, widen, and lay out said streets in such manner as may be approved by the mayor, and said city shall construct said streets and make said changes in said bridges as above-specified; *provided, however,* that the terminal company shall construct a bridge for the accommodation of foot passengers or a subway from the end of the new Cove street to meet Dorchester avenue at a convenient place, as determined by the railroad commissioners and street commissioners, sitting jointly, whenever said commissioners deem it necessary. The supreme judicial court or any justice thereof shall have jurisdiction in equity to enforce the provisions of this section.

Certain Land May be Released, etc.

Section 12. Said terminal company and the city of Boston may each release to the other any land which may be necessary for the uses of said terminal company, or for public ways or places respectively, upon such terms as may

be agreed upon between the trustees of the terminal company and the major and the board of street commissioners of said city; and said railroad companies may convey to each other any land or interest in land in Boston owned by them respectively, which it may be found proper to transfer for convenience in the approach to or use of the station and grounds of said terminal company.

City of Boston May Issue Notes, Bonds, etc.

Section 13. For the purpose of paying any expenses incurred by the city of Boston in carrying out the provisions of this act the city council of said city may from time to time, on the request of the mayor, authorize the
492 city treasurer to issue notes, bonds or scrip of said city to the amount specified in any such request, for a term or terms not exceeding thirty years from the date thereof, provided the sum total of such amounts shall not exceed two million dollars. If the city council shall not within thirty days after a request from the mayor authorize the loan requested, then the city treasurer of said city shall, on the request of the mayor, issue and sell notes, bonds or scrip of said city, for the purpose of paying such expenses, which shall be outside of the debt limit, and shall be for such terms not exceeding five years, as said treasurer shall determine, provided that the amount of said loan shall not exceed two million dollars. All such notes, bonds or scrip, whether inside or outside of the debt limit, shall be negotiable, shall bear interest payable semi-annually, shall be registered or with interest coupons attached, and shall be sold and disposed of in such manner, at such times, at such prices, in such amounts, and at such rates of interest not exceeding four per cent. per annum, as said treasurer may determine; and any premiums received by said treasurer in the sale of any of said notes, bonds or scrip shall, if the notes, bonds or scrip are issued for a term of ten years or more, be paid to the board of commissioners of sinking funds of said city, and be by them placed in the sinking fund for the redemption of the loan created; otherwise they shall be applied to the payment of said notes, bonds or scrip, or to the payment of said expenses, as the mayor may determine.

Real Estate Benefited to be Assessed a Proportionate Part of One-half of Expense Incurred by City, etc. Proviso. Certain Provisions of Law to Apply.

Section 14. The board of street commissioners of the city of Boston shall, within two years after the completion of said union station, assess upon any real estate in the city of Boston which in the opinion of said board receives any benefit and advantage from the location and construction of said union station, Summer street and Cove street, beyond the general advantage to all real estate in said city, a proportionate part of one half of the expense incurred by said city therefor, but in no case exceeding such benefit and advantage: *provided, however,* that said terminal company shall convey in fee to said city all the lands easterly of the westerly line of Dorchester avenue extended, without requiring any compensation therefor, and all the land except the piece between Purchase street and Atlantic avenue required for the laying out, widening and extension of
493 Cove street and Summer street, at its actual reasonable cost to said company; and the city of Boston shall assume all such assessments which may be assessed upon land of said terminal company, or of either of said railroad companies, held for railroad purposes. Except as otherwise provided in this section, sections two, three, five, six, seven and eight of chapter fifty-one of the Public Statutes shall apply to assessments under this section.

The Union Freight Railroad Company to Relocate Certain Tracks. Relocations to be Filed, etc.

Section 15. The Union Freight Railroad Company shall, upon the request of the terminal company or of the mayor of Boston, remove its tracks on Federal street as now existing, and relocate and maintain the same on Dorchester avenue as extended under this act, Summer street extended, or on Cove street and Summer street to Atlantic avenue, or on either of said routes, as they are or shall be established and constructed under the provisions of this act, with the same powers and privileges and subject to the same duties, restrictions and liabilities now existing as to said tracks as located in their present location, upon such locations and in such manner as may from time to time be approved by the mayor, and such relocations thereof shall be filed in the of-

fice of the city clerk. The supreme judicial court or any justice thereof shall have jurisdiction in equity to compel compliance with the provisions of this section.

The West End Street Railway Company to Relocate Certain Tracks. Relocations to be Filed, etc.

Section 16. The West End Street Railway Company shall, upon the request of the terminal company or of the mayor of Boston, remove its tracks on Federal street as now existing between Summer street and Federal street bridge, and relocate and maintain the same, with all necessary turnouts and connections on Summer street as extended, on Dorchester avenue as extended and on Cove street as widened and extended under this act, upon such locations and in such manner as may be from time to time approved by the mayor; and such relocations thereof shall be filed in the office of the city clerk. The supreme judicial court or any justice thereof shall have jurisdiction in equity to compel compliance with the provisions of this section.

The New England Railroad Company May Take Certain Land, Extend Its Road, etc. Bridges May be Constructed Across Fort Point Channel, etc. The New England Railroad Company May Use Proceeds of Certain Bonds to Pay Expenses.

Section 17. The New England Railroad Company, for the purpose of connecting its road with the union station herein authorized to be constructed, may extend its road from a point in the city of Boston as near the northerly end
494 of its South Bay drawbridge as it may find practicable, to said terminal company's grounds, and for that purpose may purchase or otherwise take in fee a strip of land not exceeding thirty feet in width through the land and location of the Old Colony Railroad Company, parallel to its main tracks as they may be then located, subject however to the right of the Old Colony Railroad Company to cross the same; and the New England Railroad Company, the Old Colony Railroad Company and the Boston and Providence Railroad Corporation may jointly or separately construct such bridges across Fort Point channel as may be

required for the adequate connection of their roads with each other and with the grounds of the terminal company, the plans thereof to be approved by the harbor and land commissioners; and said New England Railroad Company may use the proceeds of bonds issued under its mortgage made the second day of September in the year eighteen hundred and ninety-five, and recorded with Suffolk county deeds on the twelfth day of September in the year eighteen hundred and ninety-five, to pay any expenses incurred by it under the provisions of this act.

The Boston and Providence Railroad Corporation May Take Certain Land for Extension of Road, etc. May Take Certain Land for a Station in Substitution for Its Present Station, etc. Location to be Filed, etc.

Section 18. The Boston and Providence Railroad Corporation, for the purpose of connecting its road with the union passenger station hereby required to be constructed, may extend its road from a point at or near Dartmouth street to said terminal company's grounds, and thus abolish the grade crossing of its road and the road of the Boston and Albany Railroad Company, and for that purpose may purchase or otherwise take in fee within seven years after the completion of said union passenger station, or within such further time as said corporations may with the approval of the railroad commissioners agree, a strip of land on the southerly side of and adjacent to the main tracks of the Boston and Albany Railroad Company as they shall be then established, not exceeding one hundred feet in width; but it shall not take any land of the Boston and Albany Railroad Company within seven feet of the main tracks of the railroad of that company as then existing, without the consent of the directors of that company. And for the purpose of providing a station and facilities for passengers and public accommodation as hereinafter provided, in substitution for its present passenger station and facilities at
495 Park square, which such change of its road to enable it to use the union station will require to be abandoned, the Boston and Providence Railroad Corporation may purchase, or otherwise take in fee, any land within the following limits, to wit:—Bounded by land of the Boston and Albany Railroad Company, Columbus avenue, and

Buckingham, Dartmouth, Harwich and Yarmouth streets, and the land now of the Boston and Providence Railroad Corporation, and any other land adjacent thereto, within such limits as the board of railroad commissioners may upon hearing in writing prescribe; and said corporation shall file a location of the land hereinbefore authorized to be taken by it, or of so much thereof as it then deems it necessary to take, in the registry of deeds for the county of Suffolk, within three months after the plans for such station and facilities are approved as hereinafter provided, and shall thereupon, either alone or with the Boston and Albany Railroad Company, if they so agree, proceed with all reasonable diligence to the construction of a passenger station thereon as herein provided.

To Prepare Plans, etc., for Construction of Station, etc. Plans to be Submitted for Approval, etc.

Section 19. The Boston and Providence Railroad Corporation shall, within six months after said terminal company files its first location of land herein authorized to be taken for the construction of a union passenger station, prepare plans and specifications for the construction of a passenger station and approaches thereto and facilities for passengers and public accommodation, which shall be an adequate substitute for its present passenger station and facilities at Park square, and adequate for the business to be accommodated, and of such construction as may be best adapted for the accommodation of the railroad and the public, exhibiting its form, dimensions of walls, rooms, and partitions and arrangements, and its location with reference to the adjacent streets and to the tracks of all railroad companies located or proposed to be located in the vicinity thereof, and any projection over adjacent streets, so far as practicable, and shall submit said plans when completed to the mayor of Boston for his approval, who shall forthwith approve or disapprove them in writing. The Boston and Providence Railroad Corporation shall then at once submit said plans to the board of railroad commissioners for its approval, and said board, after notice to the railroad companies and to the mayor of Boston, and a hearing,
shall approve the plans, or order such changes thereof
496 as in their judgment the safety and convenience of the public and the interests of the railroad companies

require. Said station, approaches and facilities shall be constructed and provided by the Boston and Providence Railroad Corporation according to the plans thus approved by the board of railroad commissioners, or as the same may be changed as hereinafter provided, and the supreme judicial court or any justice thereof shall have jurisdiction in equity to enforce the provisions of this section. But the Boston and Providence Railroad Corporation may from time to time propose to the mayor of Boston any changes in the plans for said station, approaches and facilities, and the mayor shall forthwith approve or disapprove such changes in writing, and the corporation shall then at once submit such changes to the board of railroad commissioners, who, after notice to the mayor and the railroad companies, and a hearing, shall approve the same, or order such modifications thereof as in their judgment the safety and convenience of the public and the interests of the railroad companies require.

To Abandon Use of Present Station, etc. City to Construct Suitable Approaches, etc.

Section 20. The Boston and Providence Railroad Corporation and its lessees, upon the completion of said union station and of the station or stations herein required to be constructed near Dartmouth street, shall abandon the use of their present station in Park square for railroad purposes, and their railroad northerly of the crossing of the railroad of the Boston and Albany Railroad Company near and easterly of Dartmouth street, and the board of street commissioners of the city of Boston shall lay out, and said city shall construct, suitable approaches to said station or stations to be constructed near Dartmouth street, in such directions and at such grades as said board shall deem the public convenience and necessity require, and as the mayor of said city shall approve.

The Boston and Albany Railroad Company to Contract for Construction or Common Use of Station, etc. May Take Certain Lands, etc. May Discontinue Certain Stations, etc.

Section 21. The Boston and Albany Railroad Company shall contract with the Boston and Providence Railroad

Corporation and with its lessees for the construction or common use of said station and facilities, or for the construction and use of a joint station at or near said point, in accordance with plans and specifications to be prepared and approved in the manner herein-above provided for the preparation and approval of plans for the construction of a station by the Boston and Providence Railroad Corporation, or if it does not so contract, then upon the com-
497 pletion of the union passenger station it shall construct and open for public use a station or stations adequate for the accommodation of the public, at some point or points near Dartmouth street, and for that purpose it may purchase or otherwise take in fee any land within the following limits, to wit: Bounded southerly by the location of the Boston and Albany Railroad Company, westerly by Dartmouth street, northwesterly by land of the heirs of Eben D. Jordan, Trinity place, and land of the Massachusetts Institute of Technology, and easterly by the westerly line of Clarendon street extended. And whenever a station upon the tract of land herein above-described is opened for use, the Boston and Albany Railroad Company may discontinue its present passenger stations at Columbus avenue and Huntington avenue. The supreme judicial court or any justice thereof shall have jurisdiction in equity to compel compliance with the provisions of this section.

To Abandon its Present Location, Remove Tracks, Take Certain Land, etc.

Section 22. The Boston and Albany Railroad Company, within six months after the completion of said union station, shall abandon its present location from the southerly line of Kneeland street northerly to Beach street, and shall remove its tracks from the present grade crossing on Kneeland street between Lincoln street and Albany street, and, for the purpose of extending its terminal facilities may, from time to time, purchase or otherwise take in fee, the whole or any part of the tract of land bounded and described as follows: Northerly by Kneeland street between the westerly side of Utica street and the easterly side of South street: easterly by the easterly line of South street to Lehigh street; thence across and by the westerly line of South street to the southerly line of Harvard street, so-

called; southerly by the south line of Harvard street, so-called, to the westerly line of Utica street; and westerly by said line of Utica street to Kneeland Street; and may discontinue and occupy for its purposes all streets and rights of way embraced within said limits, and may also take and discontinue any public or private ways within the tract of land bounded by Kneeland street, Albany street, Broadway, Lehigh street and South street.

Certain Provisions of Law to Apply, etc. Commission May be Appointed to Assess Damages.

Section 23. The laws of the Commonwealth relating to the taking of lands for railroad purposes, and the location and construction of railroads, and the assessment of
498 damages occasioned thereby, shall be applicable to and govern the proceedings in the taking of land hereby authorized to be taken by said terminal company or by any railroad company, except that the locations shall be filed in the registry of deeds, as herein provided, and in case the parties, including mortgagees, cannot agree upon said damages, upon petition of any such party filed within one year after the taking of the land, in the clerk's office of the superior court for Suffolk county, the same shall be assessed by a jury in that court. But if any owner of land taken and all mortgagees thereof shall elect to have the damages assessed by a commission of three disinterested persons appointed by the court, the court shall appoint such commission to assess said damages, and their award, or the award of the major part of them, when made and accepted by the court, shall be final, unless either party shall within sixty days thereafter appeal therefrom, in which case the damages shall be assessed by a jury in that court.

When Owners of Land Taken Shall be Required to Vacate Premises.

Section 24. No owner of any land taken under the provisions of this act shall be required to vacate his premises until three months after a location has been filed, taking the land, and the Boston Gas Light Company shall not be required to vacate the whole or any part of the premises now owned or occupied by it until six months after such filing, or until after such further time, not exceeding fifteen

The mileage of road operated does not include the following over which this Company has running arrangements:-

From Jersey Junction Mines to Stillwater Falls Mines operated by Sterling R.R.

" Woodlawn Junction Ry to Grand Central Depot New York City operated by Ry Co

Junction of Ry & R & L Millmanke Conn operated by Ry Co

	467
	1203
	111
	1781

MILEAGE OF ROAD OPERATED

LINE IN USE.	MAIN LINE.	BRANCHES.	LEASED.	OTHER OWNERSHIP.	TOTAL MILEAGE.	NEW LINE CONSTRUCTED DURING YEAR.	GAUGE. Iron.	GAUGE. Steel.
Length of single track,	132.40	196.66			329.06		132.00	196.06
Length of second track,	111.80	1.00	1.37		114.31			114.31
Length of third track,	3.66				3.66	3.66		3.66
Length of fourth track,	3.66				3.66	3.66		3.66
Length of yard track, sidings, and spurs,	102.01	101.3114.36			210.17			
Aggregate Length of all Tracks,	353.54	302.66.3734			662.106	7.32	1	1
Mileage of Line by States and Territories:								
New York	102.01	1130			2554			
Connecticut	102.05	192.3.4.38			402.31			
Massachusetts	5.96	97.38			77.34			

RENEWALS OF RAILS AND TIES.

New rails laid during year, 9.20

Iron, 92.5.9 tons. Steel, 6263.70 tons.

Average price of rails at distributing point: Iron, per ton. Steel, 82 per ton.

New ties laid during year, 174336 Kind (Hardwood & Oak) Number, 4.5 Average price at distributing point.

months from the time of such filing and notice, as the board of railroad commissioners and the board of gas and electric light commissioners, who are for this purpose constituted a joint board, may, upon the application of either the railroad company or the gas company, made at any time after the passage of this act, after hearing, prescribe in writing.

Terminal Company to Pay a Franchise Tax to the Commonwealth, etc.

Section 25. The terminal company shall pay a franchise tax to the Commonwealth upon the true market value of its capital stock, without any deduction whatever, but its real estate required by this act to be used by said railroad companies shall be assessed to and the taxes thereon shall be paid by said railroad companies, and in the assessment of franchise taxes upon said railroad companies each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act.

Section 26. This act shall take effect upon its passage.

Approved June 9, 1896.

499 RESPONDENT'S EXHIBIT No. 17.

Agreed true copy double page 27, sworn Annual Report to Commission by N. Y., N. H. & H. R. R. Co., year ending June 30, 1888.

P. M. C.,
For Relators.
R. E. F.,
For Respondents.

(Here follows diagram marked pages 500 and 501.)

502 RESPONDENT'S EXHIBIT No. 18.

Agreed true copy pages 8 and 9, sworn annual Report of N. Y., N. H. & H. R. R. Co. for year ending June 30, 1906, to the Commission.

P. M. C.,
For Relators.
R. E. F.,
For Respondents.

Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page a sufficient entry to show that the questions asked have not been overlooked. The word "None" may be used to apply to the whole page, or to any column, or to any item, in accordance with the fact; otherwise, if returns are not made exactly as requested, some reference, as, "See page 8," should be made to this page, on which a brief statement of the reason for the variation or omission should be given.

The mileage to be returned on the opposite page is the mileage, the operations of which are in the "Income Account," as returned on page 31 of this report.

The statement should be made of the facts as they existed at the end of the year, or of any shorter period, for which operating returns are made. If the operation of any part of the mileage so reported was begun within the period for which returns are made, an explanation of the fact should be given.

Should it be the case that the operation of some mileage was discontinued within the period for which returns are made, a specific statement of essential facts in relation to such mileage should be made below on page 8.

In giving the mileage, name the roads according to the *classification* and in the *order* indicated, and state the actual distance between terminals, *single track*, entering in the last column but one the mileage for each strip of road named, and in the last column the "Miles of line for each class of roads named."

Under "B," of this table, the "Spurs" referred to should include only those *used for traffic purposes*, as, for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only on page 67, against the item "Miles of yard track and sidings," under table "A."

By "Line operated under trackage rights" is meant such lines as are used in common with other companies by the company making report, but not owned by such company. Such lines constitute part of the line operated, but form no part of the property of the operating company. Roadway held in joint ownership may also be returned under this

head, or the proportion of roadway so owned may be returned under "Main line" owned; but in either case a full explanation must be given in order to avoid duplication of line.

In case any changes have taken place during the year covered by this report, either in the classification of line as given on the opposite page, or in the length of line reported, such changes should be explained in full on page 53.

Explanatory remarks: ——.

504 *Name of Every Railroad the Operations of which are Included in the Income Account—Page* 31.

In giving roads below, observe the following classification and order:

1. Railroad Line represented by Capital Stock: A. Main Line. B. Branches and Spurs. [See "Instructions," page 8.]

2. Proprietary Companies whose entire Capital Stock is owned by this Company.

3. Line Operated under Lease for specified sum.

4. Line Operated under Contract, or where the Rent is contingent upon earnings or other considerations.

5. Line Operated under Trackage Rights.

The New York, New Haven and Hartford Railroad Company.

Property Operated.

June 30, 1906.

Name.	From.	To.	Miles of road.	Miles of each class.
* *	* *	* *	*	
New York & Harlem R. R.	Woodlawn, N. Y.	G. C. Depot, N. Y.	12.03	....
Boston Terminal Co.	Fort Pt. Channel.	Boston Station.	.42	....
* *	* *	* *	*	

505 RESPONDENTS' EXHIBIT No. 19.

Agreed true copy Pages 12 and 13 sworn Annual Report to Commission by N. Y., N. H. & H. R. R. Co. year ending June 30, 1914.

P. M. C.,
For Relators.
R. E. F.,
For Respondents.

Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. The word "None" may be used wherever applicable. If returns are not made as required, some reference, as, "See page 12," should be made to this page, on which a brief statement of the reason for the variation or omission should be given.

The mileage to be returned on the opposite page is the single-track mileage, the operations of which are included in this report. The statement should be made of the facts as they existed at the end of the year, or of any shorter period, for which operating returns are made.

If the operation of any mileage was begun or discontinued within the period covered by this report, or if there was any change in the classification of mileage, a statement of essential facts relating to such changes should be made on page 83.

In giving the mileage, name the roads according to the *classification* and in the *order* indicated, and state the actual *single-track* distance between termini, entering in the last column but one the mileage for each strip of road named, and in the last column the total mileage of each class.

Under "B" of this table, the "Spurs" referred to should include only those *used for traffic purposes,* as, for example, a spur running from main line to a quarry or factory. Spurs in the nature of sidings should be entered only in table "A" on page 111, against the item "Miles of yard track and sidings."

Class 1 should include all line operated which the respondent carrier owns in fee.

Class 2 should cover line which has been practically absorbed or joined for operating purposes to the property of the respondent carrier, the title to which is vested in some other corporation, active or inactive, whose capital stock wholly or in a majority is owned by the respondent carrier. It should be kept clearly in mind that in many cases inactive corporations, although virtually absorbed by the controlling corporations, still retain the titles to ownership, and in such cases the roads should be reported under Class 2.

From this class should be excluded all line operated under lease or contract, even though a majority of the stock of the owning corporation is held by the respondent.

Class 3 is intended to cover all roads operated under lease, whether or not the lessor companies maintain independent organizations for financial purposes.

By "Line operated under trackage rights" is meant such line as is used in common with other companies by the company making this report, but not owned by it. Such line constitutes a part of the road operated, but forms no part of the property of the respondent.

For the purpose of this report, the respondent's proportion of road held under joint ownership or joint lease for operation should be entered on the opposite page under its appropriate class, 1, 3, or 4, and the remainder should be returned as if operated under trackage rights. All jointly-owned or jointly-leased mileage should also be shown in detail in the lower table on page 15.

Explanatory Remarks.

* In addition The N. Y., N. H. & H. R. R. Co. owns 35.21 miles of line from Danbury, Conn., to Hopewell Jct., N. Y., which has been operated by Central New England Ry. Co., since September 1st, 1913, under a trackage agreement.

507 *Road Operated.*

Name of Every Railway Company the Operations of which are Included in this Report.

In giving roads below, observe the following classification and order:

1. Line owned by respondent: (a) Main line. (b) Branches and spurs.

2. Line operated by respondent but owned by another corporation, control being secured through stock ownership.

3. Line operated under lease for specified sum.

4. Line operated under contract or agreement, or where the rent is contingent upon earnings or other considerations.

5. Line operated under trackage rights.

The New York, New Haven and Hartford Railroad Company.

Steam Roads Operated.

June 30th, 1914.

Name.	From.	To.	Miles of road.	Miles of each class.
* *	* *	* *	*	
5 N. Y. C. & H. R. R. R.	Woodlawn Jct., N. Y.	G. C. Station, N. Y.	11.91	....
* *	* *	* *	*	
Boston Term. Co.	Fort Pt. Channel.	Boston, Mass.	.42	....
* *	* *	* *	*	

508 RESPONDENTS' EXHIBIT No. 20.

Agreed true copy pages 400, 400a, 400b, 400c sworn annual report of N. Y., N. H. & H. R. R. Co. for year ending Dec. 31, 1929, to the Commission.

P. M. C.,
For Relators.
R. E. F.,
For Respondents.

(Here follow diagrams marked pages 509, 510, 511, and 512.)

513 RESPONDENTS' EXHIBIT No. 21.

Agreed true copy annual report of N. Y., N. H. & H. R. R. Co., to stockholders, pages 34 to 41, inclusive, for the year ending June 30, 1906.

P. M. C.,
For Relators.
R. E. F.,
For Respondents.

(Here follow diagrams marked pages 514, 515, 516, 517, 518, 519, 520, and 521.)

FOLD OUT IS TOO LARGE TO BE FILMED

DESCRIPTION OF RAILROAD OPERATED.

ROAD OWNED.

NAME OF ROAD.	FROM	TO	MILEAGE.					
			First Track.	Second Track.	Third Track.	Fourth Track.	Sidings.	Total.
New York, New Haven & Hartford	Woodlawn Junction, N. Y.	Providence, R. I.	173.77	173.77	55.32	55.32	168.81	626.99
	Stamford, Conn.	New Canaan, Conn.	7.60	.....	.....	.....	1.02	8.68
	Brookfield Junction, Conn.	Danbury, Conn.	5.30	.....	.....	.....	1.16	6.52
	Danbury, Conn.	South Norwalk, Conn.	23.39	.....	.....	.....	15.67	39.26
	South Norwalk, Conn.	Wilson's Point, Conn.	2.69	.....	.....	.....	4.70	7.39
	Branchville, Conn.	Ridgefield, Conn.	3.97	.....	.....	.....	.59	4.56
	Cedar Hill Junction, Conn.	Springfield, Mass.	60.17	60.17	.....	.....	92.10	212.44
	Hartford, Conn.	Berlin, Conn.	4.20	.....	.....	.....	10.60	56.80
	Berlin, Conn.	Middletown, Conn.	19.70	.....	.....	.....	5.96	15.66
	Windsor Locks, Conn.	Suffield, Conn.	4.32	.....	.....	.....	1.17	5.49
	Westfield, Conn.	Waterbury, Conn.	26.10	.....	.....	.....	5.20	31.30
	Berlin, Conn.	New Britain, Conn.	3.18	3.18	.....	.....	9.19	15.55
	Vernon, Conn.	Rockville, Conn.	4.43	.....	.....	.....	1.25	5.68
	Union Depot, New Haven	Botsford, Conn.	20.00	.83	.....	.....	13.23	40.06
	Botsford, Conn.	Massachusetts State Line	59.81	.....	.....	.....	14.60	74.41
	Botsford, Conn.	Bridgeport, Conn.	15.16	.....	.....	.....	4.68	19.84
	Bethel, Conn.	Litchfield, Conn.	38.23	.....	.....	.....	4.46	42.69
	Naugatuck Junction, Conn.	Winsted, Conn.	56.58	13.70	.....	.....	35.61	105.86
	Waterbury, Conn.	Watertown, Conn.	4.44	.....	.....	.....	.67	5.11
	Turnerville, Conn.	Colchester, Conn.	3.50	.....	.....	.....	1.03	4.62
	Loup at	Stonington, Conn.	.97	.....	.....	.....	.....	.97
	Auburn, R. I.	Pontiac, R. I.	4.69	.....	.....	.....	.39	5.08
	Auburn, R. I.	Henderson St., Providence	3.58	1.66	.....	.....	.89	6.13
	Valley Falls, R. I.	Massachusetts State Line	7.07	.....	.....	.....	.83	7.90
	Providence, R. I.	Douglas Junction, Mass.	27.73	.....	.....	.....	5.84	33.57
	Woonsocket, R. I.	Harrisville, R. I.	9.45	.....	.....	.....	1.13	10.58
		TOTAL ROAD OWNED	628.31	253.31	55.32	55.32	400.78	1,393.04

ROAD OPERATED UNDER LEASES.

NAME OF ROAD.	FROM	TO	MILES.					
			First Track.	Second Track.	Third Track.	Fourth Track.	Sidings.	Total.
Harlem River & Port Chester.	Harlem River, N. Y.	New Rochelle, N. Y.	11.50	11.50	1.23	1.23	74.95	100.45
Berkshire	Connecticut State Line	State Line, Mass.	23.17	.....	.....	.....	7.24	30.41
	Van Deusenville, Mass.	Pittsfield, Mass.	22.02	.....	.....	.....	11.08	33.10
New Haven & Northampton	New Haven, Conn.	Shelburne Junction, Mass.	94.14	.....	.....	.....	52.75	147.39
	Farmington, Conn.	New Hartford, Conn.	14.09	.....	.....	.....	3.75	17.84
	Northampton, Mass.	Williamsburgh, Mass.	7.51	.....	.....	.....	2.28	9.79
	South Deerfield, Mass.	Turner's Falls, Mass.	10.07	.....	.....	.....	2.69	12.76
Holyoke & Westfield	Westfield, Mass.	Holyoke, Mass.	10.32	.....	.....	.....	13.53	23.85
Boston & N. Y. Air Line	New Haven, Conn.	Willimantic, Conn.	52.26	5.23	.....	.....	16.47	73.96
Providence & Worcester	Providence, R. I.	Worcester, Mass.	40.90	39.88	2.15	2.15	64.44	149.52
	Valley Falls, R. I.	East Providence, R. I.	7.00	6.60	.....	.....	8.62	22.22
Pawtuxet Valley	Pontiac, R. I.	Hope, R. I.	5.67	.....	.....	.....	1.45	7.12
Old Colony	Boston, Mass.	Newport, R. I.	67.60	46.83	2.01	2.87	65.19	185.40
	Mayflower Park, Mass.	Somerset Junction, Mass.	36.31	21.44	2.74	2.74	32.18	95.41
	Middleboro, Mass.	Provincetown, Mass.	85.66	10.72	.....	.....	12.78	118.16
	Raynham, Mass.	Whittenton Junction, Mass.	3.38	3.38	.....	.....	1.18	7.94
	Braintree, Mass.	Kingston, Mass.	33.36	11.71	.....	.....	7.25	51.32
	So. Braintree, Mass.	Plymouth, Mass.	26.04	10.78	.....	.....	8.21	45.03
	Framingham, Mass.	Lowell, Mass.	26.12	4.36	.....	.....	11.33	41.81
	New Bedford, Mass.	Fitchburg, Mass.	91.25	56.16	.91	.....	67.15	215.47
	Neponset, Mass.	Mattapan, Mass.	3.50	.30	.28	.....	1.45	5.53
	Stoughton Branch Jc., Mass.	Stoughton, Mass.	1.65	1.65	.....	.....	.81	3.91
	Harrison Square, Mass.	Shawmut & Milton Junction	2.39	2.39	.....	.....	.52	5.30
	Whitman, Mass.	Bridgewater Iron Works	6.12	.....	.....	.....	1.27	7.39
	Elmwood, Mass.	Westdale, Mass.	.73	.....	.....	.....	.....	.73
	Atlantic, Mass.	Braintree, Mass.	5.41	.....	.....	.....	2.88	8.29
	Yarmouth, Mass.	Hyannis, Mass.	5.05	.....	.....	.....	2.77	7.82
	Buzzards Bay, Mass.	Woods Hole, Mass.	17.54	.....	.....	.....	3.49	21.03
	Tremont, Mass.	Fairhaven, Mass.	15.17	.....	.....	.....	1.42	16.59
	North Abington, Mass.	Hanover, Mass.	7.80	.....	.....	.....	2.83	10.63
	Mayfield, Mass.	Easton, Mass.	7.56	.....	.....	.....	1.04	8.60
	Exten. to Ply. & Mid. R. R.	Middleborough, Mass.	.42	.....	.....	.....	.....	.42
	Middleborough, Mass.	Middleborough & Taunton Jc.	8.04	.....	.....	.....	1.54	9.58
	Attleborough Br. Jc., Mass.	Attleborough, Mass.	8.60	.....	.....	.....	3.52	12.12
	Attleborough Br. Jc., Mass.	Whittenton, Mass.	.98	.....	.....	.....	.....	.98
	Pratt's Junction, Mass.	Sterling Junction, Mass.	5.03	.....	.....	.....	1.32	6.35
	Lancaster Br. Junction, Mass.	Lancaster Mills, Mass.	1.63	.....	.....	.....	.38	2.01
	Marlborough Junction, Mass.	Marlborough, Mass.	1.47	.....	.....	.....	1.42	2.89
	South Framingham, Mass.	Woman's Reformatory	.62	.....	.....	.....	.54	1.16
		CARRIED FORWARD	767.38	241.93	10.24	9.01	493.72	1,522.28

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ROAD OPERATED UNDER LEASES.—Continued.

NAME OF ROAD.	FROM	TO	MILEAGE. First Track.	Second Track.	Third Track.	Fourth Track.	Sidings.	Total.
		Brought Forward	797.38	241.03	33.24	9.01	403.72	1,524.38
Old Colony	Walpole Junction, Mass.	North Attleborough, Mass.	11.88	.....	.....	.....	3.95	15.83
	North Attleborough, Mass.	Adamsdale Junction, Mass.	3.86	.....	.....	.....	1.64	5.50
	North Attleborough Jc., Mass.	Chestnut St., No. Attleborough	.97	.....	.....	.....	.....	.97
	Walpole Junction, Mass.	Norwood Junction, Mass.	5.76	.....	.....	.....	3.00	8.76
	New Bedford, Mass.	Fall River, Mass.	12.45	.....	.....	.....	4.86	16.51
	Fall River, Mass.	Warren, R. I.	7.95	.....	.....	.....	1.27	9.22
	Connection with P. & W. R. R.	near Pleasant View, Mass.	.22	.....	.....	.....	.....	.22
	Connection with N. E. R. R.	Boston, Mass.	.23	.23	.....	.....	.....	.46
	Nantasket Junction, Mass.	Pemberton, Mass.	6.05	6.08	.....	.....	3.35	17.18
Boston & Providence	Boston, Mass.	Providence, R. I.*	41.89	41.89	12.88	12.88	16.18	125.72
	East Junction, Mass.	India Point, R. I.	8.05	.....	.....	.....	7.94	15.99
	Forest Hills, Mass.	Dedham, Mass.	5.37	5.37	.....	.....	4.57	15.31
	Readville, Mass.	Dedham, Mass.	2.47	2.47	.....	.....	14.69	19.63
	Connection with N. E. R. R.	Readville, Mass.	1.20	1.20	.....	.....	.....	2.40
	Canton Junction, Mass.	Stoughton, Mass.	4.05	4.05	.....	.....	3.29	11.39
Prov., Warren & Bristol	India Point, R. I.	Bristol, R. I.	14.15	7.77	.....	.....	9.54	31.46
	India Point Branch		.75	.....	.....	.....	.....	.75
Chatham	Harwich, Mass.	Chatham, Mass.	7.07	.....	.....	.....	.99	8.06
Plymouth & Middleborough	Plymouth, Mass.	Middleborough, Mass.	15.03	.....	.....	.....	1.12	16.15
New England	Boston, Mass.	Hopewell Junction, N. Y.	213.56	140.48	.....	.....	138.07	522.01
	Wingate, N. Y.	Fishkill Landing, N. Y.	1.80	.....	.....	.....	11.07	12.87
	Boston, Mass.	South Boston, Mass.	1.04	1.04	.....	.....	.....	2.08
	Providence, R. I.	Willimantic, Conn.	57.70	1.27	.....	.....	22.93	81.96
	Cook St., Newton, Mass.	Woonsocket, R. I.	28.67	.....	.....	.....	7.72	36.39
	East Thompson, Conn.	Southbridge, Mass.	17.36	.....	.....	.....	3.29	20.65
	East Hartford, Conn.	B. & A. Jc., Springfield, Mass.	28.31	.....	.....	.....	7.33	35.64
	Melrose, Conn.	West St., Rockville, Conn.	7.22	.....	.....	.....	.40	7.62
	Dedham Junction, Mass.	Dedham, Mass.	1.53	.....	.....	.....	1.08	2.61
	Islington, Mass.	Dedham, Mass.	2.00	.....	.....	.....	.11	2.11
Norwich & Worcester	Groton, Conn.	Worcester, Mass.	70.97	.....	.....	.....	37.16	108.13
	Connection at	Norwich with N. L. N. R. R.	.63	.....	.....	.....	.27	.90
Rhode Island & Mass.	Franklin, Mass.	Rhode Island State Line	6.52	.....	.....	.....	.86	7.38
Milford & Woonsocket	Bellingham, Mass.	Ashland, Mass.	15.13	.....	.....	.....	3.33	18.46
Milford, Franklin & Prov.	Bellingham, Mass.	Franklin, Mass.	4.65	.....	.....	.....	.42	5.07
		Total Road Operated Under Leases	1,374.03	463.58	73.12	21.89	874.45	2,757.07
		Total Road Owned and Leased	2,092.91	710.89	78.14	77.21	1,275.23	4,130.71

* Includes only one-half of mileage of tracks between Providence Passenger Station and "Boston Switch." The total lengths are as follows:

2 and 2nd tracks, 3 miles each, 3rd and 4th tracks, 4 ½ miles each, all owned jointly by the P. & W. R. R. Co. and the B. & P. R. R. Co.

509 510 518-519

ROAD OPERATED UNDER TRACKAGE RIGHTS.

NAME OF ROAD.	FROM	TO	MILEAGE.					
			First Track.	Second Track.	Third Track.	Fourth Track.	Sidings.	Total.
New York & Harlem	Woodlawn Junction, N. Y.	Grand Central Depot, N. Y.	12.03	12.03	12.03	12.03	.....	48.12
Newburgh, Dutchess & Conn.	Hopewell Junction, N. Y.	Wicopee, N. Y.	10.95	.....	.....	.....	.....	10.95
Dutchess County	Hopewell Junction, N. Y.	Poughkeepsie Junction, N. Y.	12.40	.....	.....	.....	.....	12.40
Boston Terminal Co.	Fort Point Channel	Station, Boston, Mass.	.42	.42	.68	.42	.....	1.68
Boston & Albany	Junction to Station	Ashland, Mass.	.22	.....	.....	.....	.....	.22
	Junction to Station	Worcester, Mass.	.15	.15	.....	.....	.....	.30
	Junction to Station	Springfield, Mass.	.59	.....	.....	.....	.....	.59
Boston & Maine	Junction to Station	Lowell, Mass.	.57	.....	.....	.....	.....	.57
	Sterling Junction, Mass.	Worcester, Mass.	11.94	11.94	.....	.....	.....	23.88
Fitchburg	Shelburne Junction, Mass.	Shelburne Falls, Mass.	4.67	.....	.....	.....	.....	4.67
TOTAL ROAD OPERATED UNDER TRACKAGE RIGHTS			53.94	24.54	12.45	12.45	.....	103.38
TOTAL ROAD OPERATED			956.88	741.43	90.89	89.66	1,275.23	4,054.09

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DESCRIPTION OF ROAD OPERATED.

ROAD OWNED JUNE 30, 1914.

NAME OF ROAD.	FROM	TO	MILEAGE. First Track	Second Track	Third Track	Fourth Track	Sidings	Total
New York, New Haven & Hartford	Woodlawn Junction, N. Y.	Providence, R. I.	173.36	172.87	62.26	61.65	219.49	689.73
	Boston, Mass.	Hopewell Junction, N. Y.	(1) 212.62	171.91	.....	.....	163.32	547.85
	New Haven, Conn.	Willimantic, Conn.	51.27	5.23	.....	.....	11.62	68.12
	Cedar Hill Junction, Conn.	Springfield, Mass.	60.27	60.33	.....	.....	105.11	225.71
	New Haven, Conn.	Pittsfield, Mass.	118.34	19.59	.....	.....	50.87	198.80
	Van Deusenville Jct., Mass.	State Line, Mass.	9.54	.....	.....	.....	.....	9.54
	New Haven, Conn.	Shelburne Junction, Mass.	94.12	.....	.....	.....	41.67	135.79
	Farmington, Conn.	New Hartford, Conn.	14.87	.....	.....	.....	2.39	17.26
	Northampton, Mass.	Williamsburgh, Mass.	7.70	.....	.....	.....	1.92	9.62
	South Deerfield, Mass.	Turner's Falls, Mass.	9.90	.....	.....	.....	2.65	12.64
	Devon, Conn.	Winsted, Conn.	54.93	26.30	.....	.....	36.40	117.63
	Stamford, Conn.	New Canaan, Conn.	7.92	.....	.....	.....	2.81	10.73
	Danbury, Conn.	South Norwalk, Conn.	22.99	.....	.....	.....	16.19	39.18
	South Norwalk, Conn.	Wilson's Point, Conn.	2.44	.....	.....	.....	7.58	10.22
	Branchville, Conn.	Ridgefield, Conn.	4.16	.....	.....	.....	1.21	5.37
	Hartford, Conn.	Fenwick, Conn.	46.20	.....	.....	.....	18.33	64.53
	Windsor Locks, Conn.	Suffield, Conn.	4.27	.....	.....	.....	1.17	5.44
	Bridgeport, Conn.	Botsford, Conn.	14.74	.36	.....	.....	5.80	20.30
	Hawleyville, Conn.	Litchfield, Conn.	32.28	.....	.....	.....	3.37	35.65
	Waterbury, Conn.	Watertown, Conn.	4.83	.....	.....	.....	.88	5.71
	Brookfield, Conn.	Danbury, Conn.	2.96	2.41	.....	.....	2.58	7.95
	Wicopee Junction, N. Y.	Fishkill Landing, N. Y.	(2) 1.65	.....	.....	.....	11.07	12.72
	Berlin, Conn.	Middletown, Conn.	9.70	.....	.....	.....	7.25	16.95
	Westfield, Conn.	Waterbury, Conn.	(3) 24.19	.....	.....	.....	9.35	33.54
	Berlin, Conn.	New Britain, Conn.	7.46	2.40	.....	.....	7.49	17.35
	Auburn, R. I.	Hope, R. I.	10.36	.....	.....	.....	1.91	12.27
	Auburn, R. I.	Henderson St., R. I.	3.58	1.69	.....	.....	1.86	6.53
	Valley Falls, R. I.	Franklin, Mass.	13.59	.....	.....	.....	1.69	15.28
	Providence, R. I.	Harrisville, R. I.	19.15	.....	.....	.....	3.09	22.24
	Providence, R. I.	East Providence, R. I.	1.88	1.88	.11	.11	.96	4.94
	Forestdale, R. I.	Douglas Junction, Mass.	17.59	.....	.....	.....	4.63	22.22
	East Blackstone, Mass.	Needham Junction, Mass.	22.16	.....	.....	.....	6.30	28.46
	East Blackstone, Mass.	Woonsocket, R. I.	2.51	.....	.....	.....	5.86	8.37
	Connection with B. & P. R. R., P. & W. R. R. and P. W. & B. R. R.	East Providence, R. I.	.30	.30	.....	.....	.....	.60
	Wickford Junction, R. I.	Wickford Landing, R. I.	3.42	.....	.....	.....	1.03	4.45
	Needham Junction, Mass.	Cook Street, Mass.	3.90	.....	.....	.....	1.72	5.62
	Boston, Mass.	South Boston, Mass.	1.04	1.04	.....	.....	39.32	41.40
	Providence, R. I.	Willimantic, Conn.	57.76	1.27	.....	.....	21.91	80.94
	West Roxbury, Mass.	Needham, Mass.	4.53	4.10	.....	.....	.13	8.76
	East Thompson, Conn.	Southbridge, Mass.	17.06	.....	.....	.....	3.50	20.56
	East Hartford, Conn.	B. & A. Jct., Springfield, Mass.	28.31	.....	.....	.....	8.60	36.91
	Melrose, Conn.	West St., Rockville, Conn.	7.22	.....	.....	.....	.58	7.80
	Dedham Junction, Mass.	Dedham, Mass.	1.53	.....	.....	.....	.57	2.10
	Islington, Mass.	Dedham, Mass.	2.00	.....	.....	.....	.11	2.11
	Anston, Conn.	Colchester, Conn.	3.59	.....	.....	.....	.92	4.51
	Vernon, Conn.	Rockville, Conn.	4.60	.....	.....	.....	2.70	7.30
	Franklin Junction, Mass.	Ashland, Mass.	19.78	.....	.....	.....	3.90	23.68
	Woonsocket, R. I.	Forestdale, R. I.	.44	.....	.....	.....	.13	.57
	TOTAL ROAD OWNED		1,234.60	481.68	62.37	61.76	841.03	2,681.44
	LESS MILEAGE OPERATED BY OTHER CARRIERS		41.02	33.56	.....	.....	26.41	100.99
	[illegible]		1,193.58	448.12	62.37	61.76	814.62	2,580.45

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ROAD OPERATED UNDER LEASES, JUNE 30, 1914.

NAME OF ROAD	FROM	TO	MILEAGE. First Track	Second Track	Third Track	Fourth Track	Fifth Track	Sixth Track	Sidings	Total
Harlem River & Port Chester	Harlem River, N. Y.	New Rochelle, N. Y.	11.28	11.25	10.70	10.78	9.68	9.64	101.97	165.30
Holyoke & Westfield	Westfield, Mass.	Holyoke, Mass.	10.59	.....	.....	.....	.....	.....	10.67	21.26
Providence & Worcester	Providence, R. I.	Worcester, Mass.	*40.84	40.84	2.18	2.15	.....	.....	96.79	182.80
	Valley Falls, R. I.	East Providence, R. I.	7.00	3.07	.....	.....	.....	.....	10.42	23.50
	Wye Connection at	Worcester, Mass.	.31	.31	.....	.....	.....	.....	.....	.62
Old Colony	Boston (Ft. Pt. Channel), Mass.	Newport, R. I.	67.58	44.88	4.53	4.45	.....	.....	67.49	188.93
	Braintree Highlands, Mass.	Somerset Junction, Mass.	36.63	21.70	2.74	2.74	.....	.....	34.87	98.68
	Middleboro, Mass.	Provincetown, Mass.	85.82	20.12	.....	.....	.....	.....	15.03	120.97
	Raynham, Mass.	Whittenton Junction, Mass.	3.38	3.38	.....	.....	.....	.....	1.18	7.94
	Braintree, Mass.	Kingston, Mass.	38.31	17.84	.....	.....	.....	.....	9.49	89.54
	So. Braintree, Mass.	Plymouth, Mass.	26.04	14.31	.....	.....	.....	.....	8.42	48.97
	Framingham, Mass.	Lowell, Mass.	25.98	4.36	.....	.....	.....	.....	13.06	43.60
	New Bedford, Mass.	Fitchburg, Mass.	90.50	70.73	.....	.....	.....	.....	75.64	236.87
	Neponset, Mass.	Mattapan, Mass.	3.19	.30	.28	.....	.....	.....	1.73	5.50
	Stoughton Branch Jct., Mass	Stoughton, Mass.	1.65	1.65	.....	.....	.....	.....	.61	3.91
	Harrison Square, Mass.	Shawmut & Milton Jct., Mass.	2.35	2.36	.....	.....	.....	.....	.88	5.90
	Whitmen, Mass.	Bridgewater Iron Works	6.18	.....	.....	.....	.....	.....	1.07	7.20
	Elmwood, Mass.	Westdale, Mass.	.75	.....	.....	.....	.....	.....	.....	.75
	Atlantic, Mass.	Braintree, Mass.	3.42	.....	.....	.....	.....	.....	3.01	8.42
	Yarmouth, Mass.	Hyannis, Mass.	5.05	.....	.....	.....	.....	.....	2.88	7.93
	Buzzards Bay, Mass.	Woods Hole, Mass.	17.58	.....	.....	.....	.....	.....	4.04	21.62
	Tremont, Mass.	Fairhaven, Mass.	13.11	.....	.....	.....	.....	.....	1.58	16.69
	North Abington, Mass.	Hanover, Mass.	7.80	.....	.....	.....	.....	.....	3.17	10.97
	Matfield, Mass.	Easton, Mass.	7.60	.....	.....	.....	.....	.....	1.00	8.60
	P. & M. R. R. Connection	Middleboro, Mass.	.39	.....	.....	.....	.....	.....	.....	.39
	Middleboro, Mass.	M. & T. Junction	7.98	.....	.....	.....	.....	.....	1.47	9.45
	Attleboro Br. Jct., Mass.	Attleboro, Mass.	8.60	.....	.....	.....	.....	.....	3.45	12.05
		CARRIED FORWARD	527.94	260.20	20.52	20.12	9.68	9.64	430.85	1,487.95

*Includes only one-half of mileage of tracks between Providence Passenger Station and "Boston Switch". The total lengths are as follows:

1st and 2nd tracks, 3 miles each; 3rd and 4th tracks, 640 miles each; all owned jointly by the P. & W. R. R. Co. and the B. & P. R. R. Co.

ROAD OPERATED UNDER LEASES, JUNE 30, 1914.—Continued.

NAME OF ROAD.	FROM	TO	MILEAGE. First Track	Second Track	Third Track	Fourth Track	Fifth Track	Sixth Track	Sidings	Total
		BROUGHT FORWARD.	527.94	260.20	20.52	20.12	9.68	9.64	439.85	1,287.95
Old Colony	Attleboro Br. Jct., Mass.	Whittenton, Mass.	.94	.....	.....	.....	.....	.....	.....	.91
	Pratt's Junction, Mass.	Sterling Jct., Mass.	4.89	.....	.....	.....	.....	.....	1.24	6.03
	Lancaster Br. Jct., Mass.	Lancaster Mills, Mass.	1.43	.....	.....	.....	.....	.....	.38	1.81
	Marlboro Junction, Mass.	Marlboro, Mass.	1.31	.....	.....	.....	.....	.....	1.42	2.93
	South Framingham, Mass.	Woman's Reformatory	.63	.....	.....	.....	.....	.....	.56	1.19
	Walpole Junction, Mass.	North Attleboro, Mass.	11.88	.....	.....	.....	.....	.....	3.95	15.83
	North Attleboro, Mass.	Adamsdale Junction, Mass.	3.86	.....	.....	.....	.....	.....	2.72	6.58
	Walpole, Mass.	Norwood Junction, Mass.	5.76	.....	.....	.....	.....	.....	5.25	11.01
	New Bedford, Mass.	Fall River, Mass.	13.43	.....	.....	.....	.....	.....	4.25	17.68
	Fall River, Mass.	Warren, R. I.	7.95	4.38	.....	.....	.....	.....	1.27	13.60
	Connection Southampton St.	Boston Division, Boston.	.43	.43	.....	.....	.....	.....	.24	1.10
	Nantasket Junction, Mass.	Pemberton, Mass.	6.95	6.85	.....	.....	.....	.....	3.27	17.05
	Plymouth, Mass.	Middleboro, Mass.	15.03	.....	.....	.....	.....	.....	.88	15.91
Boston & Providence	Boston, Mass.	Providence, R. I.	*41.89	41.89	13.44	13.38	.....	.....	69.48	180.28
	East Junction, Mass.	India Point, R. I.	8.05	6.89	.....	.....	.....	.....	7.60	22.54
	Forest Hills, Mass.	Dedham, Mass.	5.37	5.37	.....	.....	.....	.....	4.52	15.26
	Readville, Mass.	Dedham, Mass.	2.47	2.47	.....	.....	.....	.....	18.35	23.33
	Connection Prov. & Mid. Divs.	Readville, Mass.	1.40	1.40	.....	.....	.....	.....	.....	2.80
	Canton Junction, Mass.	Stoughton, Mass.	4.05	4.05	.....	.....	.....	.....	3.33	11.43
Prov., Warren & Bristol	India Point, R. I.	Bristol, R. I.	14.00	7.77	.....	.....	.....	.....	9.56	31.33
	India Point Branch		.49	.....	.....	.....	.....	.....	.....	.49
Chatham	Harwich, Mass.	Chatham, Mass.	7.07	.....	.....	.....	.....	.....	1.00	8.07
Norwich & Worcester	Groton, Conn.	Worcester, Mass.	70.85	.78	.....	.....	.....	.....	40.67	112.24
	Wye Connection at	Worcester, Mass.	.82	.13	.....	.....	.....	.....	.....	.35
	TOTAL ROAD OPERATED UNDER LEASES		758.44	342.53	33.96	33.70	9.68	9.64	619.91	1,807.86
	TOTAL OF OWNED AND LEASED ROAD OPERATED		1,052.02	700.65	96.33	95.46	9.68	9.64	1,414.53	4,378.31

* Includes only one-half of mileage of tracks between Providence Passenger Station and "Boston Switch." The total lengths are as follows:

1st and 2nd tracks, 5 miles each; 3rd and 4th tracks, 4.30 miles each; all owned jointly by the B. & P. R. R. Co. and the P. & W. R. R. Co.

WEIGHT OF RAIL PER YARD IN MAIN TRACKS AND BRANCHES, JUNE 30, 1914.

	TOTAL.	141 lb.	100 lb.	90 lb.	80 lb.	79 lb.	76 lb.	75 lb.	74 lb.	72 lb.	70 lb.	66 lb.—67 lb. 65 lb.—66 lb.	56 lb. or under.
Miles of first and additional main tracks operated and maintained	2053.78	.99	963.28	159.31	404.26	107.98	626.09	9.70	139.83	13.83	181.04	175.96	70.89
Per cent. of total miles of track	100%	.03	32.62	5.40	13.68	3.65	21.20	.32	8.11	.47	6.16	5.95	2.40

NOTE.—All steel rail. With the exception of sidings (not included in above figures) there is no iron rail in the track.

ROAD OPERATED UNDER TRACKAGE RIGHTS, JUNE 30, 1914.

NAME OF ROAD.	FROM	TO	MILEAGE. First Track	Second Track	Third Track	Fourth Track	Fifth Track	Sixth Track	Sidings	Total
New York & Harlem	Woodlawn Junction, N. Y.	Grand Central Depot, N. Y.	11.01	11.99	12.22	11.79	.....	.....	37.97	85.88
Boston Terminal Co.	Port Point Channel	Station, Boston, Mass.	.42	.42	.42	.42	.....	.....	.....	1.68
Boston & Albany	Cook St., Mass.	Newton Highlands, Mass.	.31	.....	.....	.....	.....	.....	.....	.31
	South Framingham, Mass.	Boston, Mass.	20.78	20.72	20.25	20.29	.....	.....	.....	82.04
	Junction to Station	Springfield, Mass.	.59	.....	.....	.....	.....	.....	.....	.59
	Junction to Station	Springfield, Mass.	.17	.83	.19	.....	.....	.....	.....	.59
Boston & Maine	Junction to Station	Lowell, Mass.	.57	.57	.....	.....	.....	.....	.....	1.14
	Sterling Junction, Mass.	Worcester, Mass.	11.74	11.74	.....	.....	.....	.....	.....	23.48
	Shelburne Junction, Mass.	Shelburne Falls, Mass.	4.59	4.59	.....	.....	.....	.....	.....	9.18
		TOTAL ROAD OPERATED UNDER TRACKAGE RIGHTS	51.08	50.26	33.08	32.50	.....	.....	37.97	204.89
		TOTAL MILEAGE OPERATED JUNE 30, 1914	2,003.10	840.91	129.41	127.96	9.68	9.64	1,473.50	4,503.80
		MILEAGE OPERATED JUNE 30, 1913	2,774.80	901.37	133.17	128.61	9.68	9.64	1,493.00	4,769.67
		DECREASE	111.10	60.46	3.76	.65	.....	.....	20.50	196.47

RECAPITULATION OF MILEAGE BY STATES, JUNE 30, 1914.

STATES	ROAD OWNED First Track	ROAD OWNED Total Track	ROAD LEASED First Track	ROAD LEASED Total Track	Operated Under Trackage Rights First Track	Operated Under Trackage Rights Total Track	GRAND TOTAL First Track	GRAND TOTAL All Tracks
New York	44.06	154.01	11.28	165.39	11.91	85.88	67.25	405.28
Connecticut	868.13	1,397.87	53.16	82.07			861.29	1,870.44
Rhode Island	184.03	204.37	60.43	204.37			295.46	457.31
Massachusetts	249.36	475.99	631.87	1,358.03	39.17	119.01	900.39	1,952.86
	1,134.60	2,682.44	758.44	1,809.86	51.08	204.89	2,044.39	4,694.19
Less mileage operated by other carriers	41.02	100.00					41.02	100.00
Total operated	1,093.58	2,582.45	758.44	1,809.86	51.08	204.89	2,003.10	4,503.20

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522 RESPONDENTS' EXHIBIT No. 22.

Agreed true copy annual report of N. Y., N. H. & H. R. R. Co. to Stockholders, pages 52-59, inclusive, for the year ending June 30th, 1914.

P. M. C.,
For Relators.
R. E. F.,
For Respondents.

(Here follow diagrams marked pages 523, 524, 525, 526, 527, 528, 529, and 530.)

Endorsed on cover: District of Columbia Supreme Court. No. 5466. The New York, New Haven & Hartford Railroad Company et al., appellants, vs. Interstate Commerce Commission. Court of Appeals, District of Columbia. Filed Aug. 5, 1931. Henry W. Hodges, Clerk.

Addition to Record per Stipulation of Counsel.

Court of Appeals of the District of Columbia

OCTOBER TERM, 1931

No. 5466

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL., APPELLANTS,

vs.

INTERSTATE COMMERCE COMMISSION.

FILED DECEMBER 10, 1931.

In the Court of Appeals of the District of Columbia.

No. 5466.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY et al., Appellants,

vs.

INTERSTATE COMMERCE COMMISSION, Appellee.

Addition to and Correction of Record by Stipulation.

It is hereby stipulated and agreed by and between counsel for the appellants and appellee that in preparing the transcript of record in the Supreme Court of the District of Columbia an error occurred affecting the transcript of record heretofore filed herein, to-wit:

Folio 467, properly printed at pages 605 and 606 of the printed transcript of record was erroneously duplicated

and appears not only as said Folio 467 in Exhibit 13, but also as Folio 431 in Exhibit 11, and was so printed on Pages 575 and 576 of the printed transcript of record. The correct Folio 431, which should have been filed herein and printed on pages 575 and 576 of the transcript of record reads as follows:

"Nineteenth. It is mutually covenanted and agreed that in case the said party of the second part shall, at any time during the term of this contract, omit and refuse to pay, in the manner herein provided, the annual rent herein reserved, or shall fail to keep and perform the covenants and agreements herein provided for on its part, or any of them, and shall continue in default in the premises for the period of ninety days, it shall be lawful for the said party of the first part, its successors and assigns to enter into and upon the said railroad, branch, premises and property hereby demised, and to remove all persons therefrom, and, thenceforth, to have, hold, possess and enjoy the same, and each and every part and parcel thereof, as of its first and former estate therein; and thereupon all the estate and interest of the said party of the second part in and to the same, and in and to each and every part and parcel thereof, shall cease and determine as absolutely as though these presents had never been made; *provided, however,* and it is mutually covenanted and agreed that the said rent shall, in such event, be apportioned from the time of the last preceding payment of any installment thereof to the time of such entry; *and provided, further,* that such entry shall not, in any manner, affect any claim for damages that the said party of the first part, its successors and assigns, may have against the said party of the second part resulting from any breach of any of the covenants or agreements herein contained.

Twentieth. The said party of the first part covenants and agrees that it will, during the continuance of this contract, keep up and maintain its existence and organization as a body corporate in due form of law, and that it will, from time to time, as a body corporate, and at all times when thereto required by the said party of the second part, but at its expense, do and perform all such acts, matters and things consistent with the rights of the said party of the first part under this contract, as shall be necessary in the

opinion and judgment of the said party of the second part, or its officers or counsel, to the due preservation and protection of all the estates, property, rights, franchises and interests herein demised to the said party of the second part, and to carry into full effect the true intent and meaning of this contract, and, in default thereof, that the same may be done by the said party of the second part, its successors and assigns, or by its lawful agents, in the name, and as the act of the said party of the first part, but at the expense of the said party of the second part; in order, however to avoid expense, the said party"

It is further stipulated and agreed that said Folio 431 heretofore entirely omitted from the transcript of record in this Court, be printed as an addition to the printed transcript of record herein, with a notation that this additional matter be regarded and considered as a substitute for the printed matter now erroneously shown as Folio 431 on pages 575 and 576 of the printed transcript of record.

P. M. COOK,
For Appellants.
R. E. FREER,
For Appellee.

[Endorsed:] In the Court of Appeals of the District of Columbia. No. 5466. New York, New Haven & Hartford Railroad Co. et al., Appellants, vs. Interstate Commerce Commission, Appellee. Addition to and correction of record by stipulation. P. Michael Cook, Attorney at Law, Commercial National Bank Bldg., Washington, D. C. Court of Appeals, District of Columbia. Filed Dec. 10, 1931. Henry W. Hodges, Clerk.

641 Tuesday, December 8th, A. D. 1931

* * * * * * *

No. 5466

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD Colony Railroad Company, Boston & Providence Railroad Corporation, et al., appellants

vs.

INTERSTATE COMMERCE COMMISSION

The argument in the above-entitled cause was commenced by Mr. John L. Hall, attorney for the appellants, and was continued by Messrs. Thomas M. Ross and Robert E. Freer, attorneys for the appellee, and was concluded by Mr. Charles O. Pengra, attorney for the appellants.

642 Court of Appeals of the District of Columbia

No. 5466

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD Colony Railroad Company, Boston & Providence Railroad Corporation, et al., appellants

v.

INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

(Argued December 8, 1931—Decided January 18, 1932)

John L. Hall and Charles O. Pengra, of Boston, Massachusetts, and P. Michael Cook, of Washington, D. C. for appellants.

Charles W. Needham, Thomas M. Ross, Robert E. Freer, and Mary B. Linkins, all of Washington, D. C., for appellee.

106538—32——1

Before MARTIN, *Chief Justice*, and VAN ORSDEL, HITZ, and GROVER, *Associate Justices*

VAN ORSDEL, *Associate Justice:* Pursuant to its authority under the interstate commerce act, the Interstate Commerce Commission, hereafter referred to as the commission, on June 30, 1915, instituted a proceeding known as Valuation Docket No. 301, to ascertain the value of the property owned or used by the New York, New Haven & Hartford Railroad Company, hereafter referred to as the New Haven.

The New Haven took exception to the report of the valuation fixed by the commission and filed a petition in the Supreme Court of the District of Columbia praying that a writ of mandamus issue to compel the commission, in making its final valuation of the property owned and used by the New Haven, to investigate, ascertain, and report the value of its rights in the passenger terminal known as the Grand Central Terminal and approaches thereto in New York City, and the passenger terminal known as the South Station in Boston.

From a judgment in the court below discharging the writ, this appeal was taken.

The New York and Harlem Railroad Company, hereafter referred to as the Harlem, was chartered by the Legislature of New York in 1831, and it constructed a line of railroad from White Plains into New York City. The New York and New Haven Railroad
643 Company was granted a perpetual charter by the State of Connecticut on June 7, 1844, and was authorized to construct its railroad from New Haven to the New York State line. Later it applied to the New York Legislature for the right to extend its railroad from the State line into New York City. This authority was not granted.

The two companies, however, entered into an agreement dated January 22, 1846, which was followed by a substituted agreement dated March 17, 1848, which provided, among other things, as follows: "Fourth, It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction by Byram River, they shall have the right to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlem Railroad Company from the point of junction aforesaid to and into the city of New York, and as far over the same in the said city as the said company's road shall extend, not, however, below the intersection of said railroad and Pearl Street in said city—the said New York and New Haven Company furnishing their own

haulage." This agreement was to continue in force "during the terms of their charters respectively, and for all renewals thereof." The charter of the New York and New Haven being perpetual, it constituted a grant in perpetuity. People *v.* O'Brien, 111 N. Y. 1.

The Legislature of New York, by the act of March 29, 1848, amended the charter of the Harlem as follows: "The New York and New Haven Railroad Company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses, and other business, over the road of the New York and Harlem Railroad Company, from the point of junction of the roads of said companies at or near Williams Bridge, in the county of Westchester, to the city of New York, and as far into the said city as the said Harlem railroad may extend, upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a copy of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this State; and to take, transport, and convey persons and property upon the said Harlem railroad, by the power and force of steam or animals or any mechanical power or combination of the same." These rights have been enjoyed by the New York and New Haven and its successor, the New Haven, up to the present time.

The rights thus acquired by the New York and New Haven under its agreement of 1848, were in the nature of a perpetual easement in the Harlem road. By the filing of the agreement in conformity with the grant of power conferred by the New York Legislature, the easement partook of the characteristics of a franchise whereby the Harlem road was subjected to a right of way, subject only to be terminated by the failure of the New York and New Haven to comply with the terms of its contract. The act of 1848, however, went further than the terms of the easement granted by the agreement of 1848, in that it constituted a public grant or franchise to the New York and New Haven road, and impressed in perpetuity a dominant servitude upon the property of its own corporation, the Harlem. It operated as an amendment of the charter of the Harlem by
644 impressing upon it the easement granted to the New York and New Haven as a franchise obligation of the Harlem. The amendment of the Harlem's charter operated as a grant of a franchise to a foreign corporation. This established a property right in the New York and New Haven which could not be destroyed even by the termination of the Harlem charter; a franchise right which could only be terminated by the payment of full compensation, under proper authority, to the New York and New Haven.

The perpetual easement and franchise thus acquired and owned by the New York and New Haven, and later transferred to the New

Haven, was granted twenty-five years before the New York Central acquired any rights over the Harlem tracks. The Central's lease by its terms expires 401 years from April 1, 1873. That lease was of all the property and interests of the Harlem. It logically follows that should this lease extend to its termination and the New Haven still be in operation, it would continue to have its rights preserved to operate over these tracks. In other words, the grant to the Central was for a term of years and as one of the conditions of its lease it is subject to the prior and superior perpetual rights of the New Haven.

On November 1, 1872, the Harlem, the Central, and the New Haven entered into a tripartite agreement whereby the Harlem agreed to construct the original Grand Central Depot at Forty-second Street in New York City and lease it to the Central and New Haven companies for the joint use and occupation of the three companies. In this agreement the rights of the New Haven were to continue during the term of its charter, which was perpetual. In the lease of the Harlem in 1873, the Central agreed to perform all the obligations imposed by this tripartite agreement on the Harlem.

This was followed by a further agreement of July 24, 1907, providing for the construction of the present Grand Central Terminal and the operation of its approaches as far north as 59th Street in New York. In paragraph three of this contract it was provided: "The Central company, acting for itself and the Harlem company, as hereinafter authorized, in consideration of the rents hereinafter reserved to be paid by the New Haven company, and in consideration of the covenants on the part of the New Haven company hereinafter contained, hath demised, let, and leased, and by these presents doth demise, let, and lease unto the New Haven company, during the term of the New Haven company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven company, the use, in common with the Central company, subject to all the provisions of this agreement, of the said railroad terminal for the accommodation of the traffic of the New Haven company, other than freight traffic; provided, however, that the New Haven company's right to the use thereof shall in no event exceed fifty (50) per centum of the maximum capacity of said railroad terminal, or of any part thereof."

The contract provided as compensation for the rights thus acquired by the New Haven, that it should pay its proportion of the interest on the cost of construction of the original Grand Central Depot, and a proportion of the annual expenses and main-
645 tenance and operation of the present Grand Central Station.

The contract further provided that the New Haven could not assign this lease without the consent of the Central and that in case of any default on the part of the New Haven to comply with the terms of the agreement for a period of sixty days, the Central should have the right to "enter into and upon said premises and repossess itself thereof."

The contract further provided that the railroad terminal should be under "the sole charge and direction of a terminal manager, who shall be appointed in writing by the presidents of the Central and New Haven companies, and shall be removable at any time upon written notice by either of said presidents." The agreement was to remain in force not only during the term of the New Haven's charter but of any renewals thereof or the charter of any company which may hereafter operate the New Haven company's railroad.

In the case of Georgia *v.* Cincinnati Southern Railway, 248 U. S. 26, where the State of Georgia granted to the trustee of the Cincinnati Southern Railway for the use of the railway, a portion of the right of way of the Western and Atlantic Railroad between certain points, with the provision "that this grant is subject to the consent and approval of the lessees of the Western and Atlantic Railroad as to the term of their lease," the State by statute undertook to repeal the act on the ground that it granted a license only. Construing the effect of this grant, the court, speaking through Mr. Justice Holmes, said: "A grant of the use of a right of way is the grant of a right of way in the ordinary meaning of the words, and a grant of a right of way to a corporation or to perpetual trustees holding for the corporate uses does not need words of succession to be perpetual. The words 'and its successors' or 'in fee' would not enlarge the content of a grant to a corporation."

That the New Haven was granted the possession and use of an undivided interest in the terminal property not exceeding fifty per cent thereof, upon the continued compliance with the terms of the contract, was emphasized by the language used in paragraph eight in which the Central covenants and agrees "that the New Haven company, paying the rent and sums of money hereinbefore mentioned and performing the covenants and agreements aforesaid on its part to be performed, shall and may at all times during the term hereby granted, peaceably have, hold, and enjoy the premises herein demised to it, without any manner of trouble or hindrance of or from the Central company or anyone claiming under it."

From the foregoing it is apparent that the New Haven company acquired most valuable property and franchise rights in the use and operation of the railroad and terminal which are entitled to consideration in the fixing of a valuation upon all its property and its property rights.

A case closely analagous to the one at bar is Proprietors of Locks and Canals *v.* Boston & Maine Railroad, 245 Mass. 52. In that case there was a lease to a railroad company during its continuance or until the Commonwealth purchased the railroad, a power the State had reserved to itself in granting the charter, or until default in payment of rent. The court, considering the effect of the lease, said: "The habendum clause shows that the leases are for an indefinite term. They are to continue until the happening of
646 one of several events and then to cease. The crucial event may happen at any time, or it may never happen. The leases, therefore, may never come to an end. The effect of the words used was to convey a base fee." In the case at bar the lease extends during the life of the perpetual charter of the New Haven company or the charter of any company operating its present railroad. It could only be terminated by the failure of the New Haven to comply with the terms of its agreement, or in default of payment of rent. As said in the above case: "They are to continue until the happening of one of several events and then cease. The crucial event may happen at any time, or it may never happen." It follows, we think, from this analogy, that the New Haven has a base fee in the undivided half of the railroad terminal and its approaches.

The case of Union Pacific Railway Company *v.* Chicago, Rock Island & Pacific Railway Company, 163 U. S. 564, held by the court below to be decisive of this case, has little or no bearing on the issues here presented. The question there involved was the validity of a contract between the Pacific company and the Rock Island for trackage rights over the bridge of the Pacific company across the Missouri River, and the approaches thereto, between Council Bluffs, Iowa, and Omaha, Nebraska. The question the court was called upon to decide was whether or not the contract was one which involved the surrender of the exercise of its franchises by the Pacific company, enjoying grants from the Federal Government.

The case was decided in 1896, several years before the valuation provisions of the interstate commerce act were enacted. No question of valuation was involved, nor was the Interstate Commerce Commission a party, directly or indirectly. By the terms of the contract, all trains of the Rock Island were to be "moved under the immediate direction of the superintendent or other officers of the lessor company." It also provided that the Rock Island trains coming upon the Pacific tracks immediately passed from the control of the Rock Island company into that of the Pacific and its officials were subjected to the orders of the Pacific officers.

The court held that the contract "was really an agreement for trackage rights, for running arrangements, a 'terminal contract' with compensation on a 'mileage' or 'wheelage basis,' rather than

a lease. * * * By the contract the Pacific company parted with no franchise, and was not excluded from any part of its property or the full enjoyment of it. What it agreed to do was to let the Rock Island into such use of the bridge and tracks as it did not need for its own purposes." In other words, that it granted merely trackage rights.

We are here dealing with a lease of an operating interest in the use of the Harlem road, and a one-half operating interest and control of the Grand Central Terminal. The position of the New Haven, unlike that of the Rock Island, is not subordinate to, but rather coextensive with, that of the Harlem, for each may absorb the use of the entire tracks subject only to the preference awarded to the express trains of each over the local trains of the other. The New Haven may use fifty per cent of the trackage and facilities of the terminal at all times despite the desire of the Central to use more than fifty per cent.

647 For the purposes of valuation, we are unable to make any material distinction between the New York terminal and the Boston terminal. In 1896 the Legislature of Massachusetts incorporated the Boston Terminal Company with power to construct and maintain a union passenger station in the city of Boston, and to provide adequate terminal facilities for the several railroads using the terminal and authorized to hold stock in the terminal company. The capital stock was fixed at $500,000 and it was provided that each of five railroad companies, of which the New Haven was one, should subscribe for 20% of the stock, to be paid in cash, and which should constitute the capital stock of the terminal company.

It was further provided that the railroad companies, upon the completion of this station and terminal should use the same for all of their terminal passenger business in Boston. The companies using the terminal were required to pay to the terminal company for such use, in monthly payments, "such amounts as may be necessary to pay the expenses of its corporate administration and of the maintenance and operation of said station, and of the facilities connected therewith and owned by said terminal company, including insurance and all repairs, all taxes and assessments which may be required to be paid by said terminal company, the interest upon its bonds or other obligations issued under the provisions of this act as the same shall become payable, and a dividend, not to exceed 4% per annum upon its capital stock. Each of said railroad companies shall pay for such use of said station and facilities in the proportion in which it has the use thereof."

It was also provided that the proportion of use of the several companies should be fixed by agreement between them, and that the terminal company should pay a franchise tax to the Commonwealth

upon the market value of its capital stock, but that the real estate required by the act to be used by the railroad companies should be assessed to and the taxes thereon paid by the companies, and "in the assessment of franchise taxes upon said railroad companies, each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act."

In other words, the terminal company was little more than a holding corporation for the various railway companies interested. The railway companies were designated in the charter as the stockholders of the terminal company. They were the terminal corporation to whom the State had granted the franchise. They assumed the obligation of constructing the terminal as well as its maintenance and operation. The terminal corporation as such, assumed no liability either in construction, maintenance, operation, or otherwise. Looking through the corporate shell of the terminal company, the real owners, the railway companies, can be seen. It is similar to a one-man corporation except that here there is not even the necessity for voting shares.

It will be observed that the proportion of use of the terminal which a road may acquire is not measured by the amount of capital stock it owns. At the time of bringing this action, through rights acquired from other roads, the New Haven had 75% of the use of the terminal and the New York Central 25%, while the New Haven is the owner of 80% of the stock. The court below held that the value of the property is reflected by the value of the stock and the mere ownership of the stock carries with it the right to use the terminal.

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In other words, the court held that the value of the use could not be separated from the value of the stock or separately valued.

We are not impressed with this view. The act granted the New Haven the charter right to use a certain proportion of the property of the terminal company. This grant was perpetual in duration and constitutes an interest in the property itself. We think that the rights of the company to the use of the terminal facilities are separate and independent from the mere ownership of stock in the terminal company. Capital stock in a railroad company is not "railway property held for and used in the service of transportation" within the meaning of the interstate commerce act. The stockholders in a railroad company are not the corporation to the extent of possessing the corporate authority to maintain and operate a railroad. The corporation is a distinct and separate entity and its property is distinct and separate from its capital stock. The owners of certificates of the capital stock are mere shareholders entitled to participate in dividends and distribution of the proceeds of the property in the event of dissolution. The property rights of the New Haven

to be valued by the commission are not measured by the capital stock it holds in the terminal company, but by the ownership and perpetual right of use it has acquired in the terminal tracks and station.

This brings us to a consideration of the duty imposed upon the Interstate Commerce Commission in placing a valuation upon the property of the New Haven road. The act of Congress of March 1, 1913 (37 Stat. 701), amendatory of the original commerce act of February 4, 1887 (24 Stat. 379), contained a section—19a—which was later incorporated without change into the interstate commerce act of February 28, 1920 (41 Stat. 493), amended by the act of June 7, 1922 (42 Stat. 624), and incorporated as amended in the transportation section of United States Code Annotated (sec. 19a, title 49). It was under the provisions of this act that the present valuation was made.

Section 19a provides that "The commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter." It further provides that the commission shall make an inventory, listing the property, showing the value thereof, and classifying the physical property as nearly as practicable in conformity with the classification of expenditures for road and equipment.

Paragraph (b), first, requires the commission to ascertain and report in detail each piece of property owned or used by the carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, together with an analysis of the methods by which these several costs are obtained. The commission was also required to report separately other values and elements of value, if any of the property, and an analysis of the methods of valuation employed. It also provided, in paragraph (b), second, that "such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way,
649 and terminals owned or used for the purpose of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same."

The act provides in detail the methods to be employed by the commission in ascertaining this valuation and then provides as follows: "All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under this chapter as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of this chapter, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

It will be observed that the power vested in the commission in making valuations is unlimited in scope. It requires a valuation of all property "owned or used" by the carrier. In providing for this comprehensive valuation, the object sought by Congress was to establish a prima facie value of all the property owned and used by the carrier.

The commission's refusal to value the interest of the New Haven in the terminals in question and the approaches, is set forth in their report as follows: "To report this property for the purpose of rate making either as property owned and used or used but not owned by the carrier would result in a duplication. The right to use these extensive terminal facilities is a commercially valuable contract right owned by the carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value, for rate-making purposes, of the carrier's property owned or used in common-carrier service, no specific value will be reported for the right of the carrier to the use of this property. We sustain the omission from the tentative valuation of the reproduction cost of this property and a finding of the value of the right to use it."

This states clearly the position of the commission in refusing to fix a valuation upon the ownership and use of the New Haven company in this property. This we think was clearly erroneous. It places a limitation upon the requirements of the act which is not justified. The commission made this finding notwithstanding its recognition of value in the report as follows: "We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole. Nevertheless, for the purpose of finding a rate base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers."

After considering the provisions of the statute and the leases and agreements of the respective companies, the commission arrived at the conclusion that "It is therefor not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement, or a trackage right." This totally ignored the right of the New Haven company to have its "property" which it both "owned" and "used" valued under the mandate of section 19a where the commission is expressly required to report the value of "all property owned or used by every common carrier."

650 The commission in fixing valuation in this case seems to have confined it to what it calls a "value for rate-making purposes," but this is only one of a number of objects for which the final valua-

tion is made prima facie evidence of the value of all the property. Section 5 of the interstate commerce act requires that the commission prepare and adopt a plan of consolidation of all of the railway properties, and paragraph (6) (b) of that section provides that "the value of the properties sought to be consolidated shall be ascertained by the commission under section 19a of this chapter, * * *." The act also provides that the valuation thus fixed shall be available for ascertaining the operating income of the railways under what is known as the recapture clause of the act. Also for the purpose of division of joint rates and issuance of securities.

It is apparent, therefore, that the establishment of a base for the fixing of rates is merely one of a number of objectives to be attained through this valuation. Nowhere in the act is there anything that either expressly or by inference can be distorted into the limitation of this valuation for rate-making purposes. The statute, on the contrary provides that it shall be a valuation of all the property of the railway company.

We must not be understood as holding that the valuation of the New Haven property fixed by the commission is not a proper valuation for rate-making purposes. This is a matter we are not called upon to decide. The statute requires a valuation of all the property "owned or used" by the carrier which shall be prima facie evidence for any and all purposes specified in the act and not merely for the purpose of establishing a rate base.

Whatever, therefore, may be the proper basis of considering the valuation for the purpose of finding a rate base, the valuation required by the statute can not be subjected to any such limitation. Whether the use be a joint use of property owned by other carriers or not, it is impressed with a value that must be considered by the commission in arriving at a proper valuation of the property of the carrier under the terms of this act.

We now come to the remedy. Appellant contends that the refusal of the commission to place a valuation upon the property in question constitutes a breach of a ministerial duty imposed upon it by statute. The commission, on the other hand, contends that in the valuation proceedings it necessarily had to consider and act adversely to appellant's contention in respect of the question here under consideration, and that in ascertaining and reporting the value of the property owned by the New Haven, the commission had to interpret the language of the statute respecting property owned or used and to exercise its discretion therein.

The interpretation of a statute by the commission refusing to perform a ministerial act which is clearly imposed is not such an exercise of discretion that it can not be controlled by mandamus.

This same argument was advanced by counsel for the commission in the case of Interstate Commerce Commission *v.* Humboldt Steamship Co., 224 U. S. 474, where the commission refused to fix steamship rates in Alaska, but the court compelled by a writ of mandamus the assumption of jurisdiction. There is a well-defined distinction between the refusal to perform a ministerial act and its performance in an erroneous way. For mere error in the performance of a statutory duty, the official discretion erroneously exercised can not be corrected by mandamus, but refusal to act amounts to a refusal to assume jurisdiction. The commission may always be required by the writ of mandamus to take jurisdiction of a statutory duty requiring official decision or action.

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True, a valuation of property was here made by the commission, but is was an erroneous valuation, not occasioned through error in the determination of the aggregate value of all the property owned and used by the New Haven company, but by the express refusal of the commission to place any value whatever upon a very important and valuable portion of the property owned and used by the company. This error did not result from erroneous valuation, but from a total lack of valuation as to the property involved. This distinguishes the case of United States ex rel. Kansas City Southern Ry. Co. et al. *v.* Interstate Commerce Commission, 6 Fed. (2d) 692, strongly relied upon by the commission, from the case at bar. There the commission valued all the property of the carrier; here it refused to value certain of the property. This distinction is clearly stated in the opinion of the court, as follows: "Nevertheless, it is manifest that the commission fully assumed and exercised the authority or jurisdiction imposed upon it by the act, and that the real complaint of the appellants is, not that the commission refused to consider the points in question, but that it considered them and thereupon decided them erroneously. The real relief sought by the appellants, accordingly, is that the valuation reported by the commission be set aside, and other valuations ordered. This clearly brings the case within the well-established rule that the action of mandamus can not be used as a substitute for an appeal, nor as a writ of error."

The commission in its report discloses complete nonaction on the matter of the valuation of this property. It expressly finds that such valuation is not necessary for the purpose of establishing a rate base. In other words, the commission refused to assume jurisdiction of an express statutory duty imposed upon it by Congress.

In Kansas City Southern Ry. Co. *v.* Interstate Commerce Commission, 252 U. S. 178, the court interpreted the language of the act requiring the commission to value "all the property owned or used

by every common carrier " as a " direct and express command." Subdivision (a) of section 19a of the act, directing the listing of the property, we think clearly refers to all property, whether physical or incorporeal, since it specifically points out the way in which the " physical property " shall be classified.

It is elementary that the commission may be compelled to assume jurisdiction of a duty imposed upon it by law. It is not within the power of the court in issuing a writ of mandamus under those circumstances to undertake to say to the commission how it shall decide the matter, but merely that it shall assume jurisdiction and decide it. Here are valuable property rights, alleged to be such by the commission, upon which no valuation has been placed in arriving at the aggregate value of the property owned and used by the New Haven road.

We think this case is controlled by the decision in Kansas City Southern Ry. Co. *v.* Interstate Commerce Commission, 252
652 U. S. 178. In that case the commission completed a tentative valuation of the property and gave notice to the carrier. The carrier filed a protest on the ground that in making the valuation the commission had failed to consider and include " the present cost of condemnation and damages or of purchase in excess of such original cost or present value." The commission decided that it would not report the reproduction cost of acquiring land, the present cost of acquisition and damages, or of purchase in excess of present value, because of the impossibility of ascertaining the same. A petition for mandamus was filed in the Supreme Court of the District of Columbia to compel the commission to hear proof and act upon it under the statute. The court dismissed the petition without opinion and the Court of Appeals affirmed the judgment by a divided court.

The Supreme Court, reversing these judgments and directing the issuance of the writ, in the course of its opinion said: " It is obvious from the statement we have made, as well as from the character of the remedy invoked, mandamus, that we are required to decide, not a controversy growing out of duty performed under the statute, but one solely involving an alleged refusal to discharge duties which the statute exacts. Admonishing, as this does, that the issue before us is confined to a consideration of the face of the statute and the nonaction of the commission in a matter purely ministerial, it serves also to furnish a ready solution of the question to be decided, since it brings out in bold contrast the direct and express command of the statute to the commission, to act concerning the subject in hand, and the commission's unequivocal refusal to obey such command. * * * Finally, even if it be further conceded that the subject matter of the valuations in question which the act of Congress expressly directed to be made necessarily opened a wide range of proof

and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the act of Congress, or what is equivalent thereto, of exerting the general power which the act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise."

Inasmuch as the statute requires the commission to investigate and report in detail and separately from improvements, the original cost of all lands, rights of way, and terminals owned or used for the purposes of the common carrier, we think that the commission's failure to comply with the command of the statute in this case is not an exercise of discretion but a refusal to act. It was not an error of decision but an absence of decision.

It is true that the commission took jurisdiction of the valuation of the New Haven road, and had they valued all its property, whatever error or mistake they may have made could not be corrected in this proceeding. They only assumed jurisdiction, however, to value a part of the property, segregating specific well-defined portions of the road which they refused to value. It is therefore not mistaken action but nonaction of which the appellant complains.

The failure to take jurisdiction is emphasized in the commission's report wherein it states: "In our finding of value in the property owned or used in common carriage service for rate-making
653 purposes we are of opinion that no specific sum should be found for the carrier's right to use these tracks."

This amounted to a refusal on the part of the commission to assume jurisdiction of a specific duty imposed upon it by Congress, and it is clearly the function of mandamus to compel the commission to assume such jurisdiction. Interstate Commerce Commission *v.* Humboldt S. S. Co., supra. Nor is it necessary that there should be a refusal by the commission to assume jurisdiction of the whole subject matter committed to it in order to authorize the issuance of the writ. It is sufficient if the refusal extends to any material part of the duty imposed by law.

As the court said in United States *v.* Los Angeles and Salt Lake Railroad Company, 273 U. S. 299, 310: "In directing the commission to investigate the value of the property of the several carriers, Congress prescribed in detail the subjects on which findings should be made and constituted the 'final valuations' and 'the classification thereof' prima facie evidence, in controversies under the act to regulate commerce. Every party in interest is, therefore, entitled to have and to use this evidence; and the carrier, being a party in interest, has the remedy by mandamus to compel the commission to make a finding on each of the subjects specifically prescribed. Kansas

City Southern Ry. Co. *v.* Interstate Commerce Commission, 252 U. S. 178."

The judgment is reversed.

JOSIAH A. VAN ORSDEL,
Associate Justice.

A true copy.
Test:

Clerk, Court of Appeals.

654 Monday, January 18th, A. D. 1932

* * * * * * *

No. 5466. January term, 1932

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, OLD Colony Railroad Company, Boston & Providence Railroad Corporation (Massachusetts), et al., appellants

vs.

INTERSTATE COMMERCE COMMISSION

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be and the same is hereby, reversed.

Per Mr. Justice VAN ORSDEL.

JANUARY 18, 1932.

Mr. Justice ROBB took no part in the consideration or decision of this case.

655 In the Court of Appeals of the District of Columbia

No. 5466. January term, 1932

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD Colony Railroad Company, Boston & Providence Railroad Corporation, et al., appellants

v.

INTERSTATE COMMERCE COMMISSION, APPELLEE

APPLICATION FOR STAY OF MANDATE

Now comes the Interstate Commerce Commission, appellee in the above-entitled cause, by counsel, and moves the court, under Rule No.

XXIV of the Rules of the Court of Appeals of the District of Columbia, to stay the mandate in said cause pending application to the Supreme Court of the United States for a writ of certiorari.

CHARLES W. NEEDHAM,
THOMAS M. ROSS,
ROBERT E. FREER,
MARY B. LINKINS,
Attorneys for Appellee.

Acknowledgment of service

Service of copy of the above application for stay of mandate is admitted this 27th day of January, 1932.

P. M. COOK,
Attorney for Appellants.

656 (Indorsed:) No. 5466. In the Court of Appeals of the District of Columbia. The New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, Boston & Providence Railroad Corporation, et al., appellants, *v.* Interstate Commerce Commission, appellee. Application for stay of mandate. Charles W. Needham, Thomas M. Ross, Robert E. Freer, Mary B. Linkins, attorneys for appellee. Court of Appeals, District of Columbia. Filed Jan. 27, 1932. Henry W. Hodges, clerk.

657 Saturday, January 30th, A. D. 1932

* * * * * * *

No. 5466

NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO. ET AL., appellants

vs.

INTERSTATE COMMERCE COMMISSION

On consideration of the motion to stay the mandate in the above-entitled cause under rule 24 pending application for certiorari, it is ordered that said motion be, and it is hereby, granted.

658 In the Court of Appeals of the District of Columbia
No. 5466

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD COLONY Railroad Company, Boston & Providence Railroad Corporation, et al., appellants

vs.

INTERSTATE COMMERCE COMMISSION

DESIGNATION FOR TRANSCRIPT ON APPLICATION FOR WRIT OF CERTIORARI

The clerk will please prepare a transcript on application for writ of certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of the cause.
3. Opinion of the court.
4. The judgment.
5. Application for stay of mandate and minute entry allowing the same.
6. This designation.
7. Clerk's certificate.

CHARLES W. NEEDHAM,
ROBERT E. FREER,
Attorneys for Appellee.

Acknowledgment of service

Service of a copy of the above designation is admitted this 9th day of February, 1932.

P. M. COOK,
Attorney for Appellants.

659 (Indorsed:) No. 5466. In the Court of Appeals of the District of Columbia. The New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, et al., appellants, *vs.* Interstate Commerce Commission. Designation for transcript on application for writ of certiorari. Charles W. Needham, Thomas M. Ross, Robert E. Freer, Mary B. Linkins, for appellee. Court of Appeals, District of Columbia. Filed Feb. 18, 1932. Henry W. Hodges, clerk.

660 Court of Appeals of the District of Columbia

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 659, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of The New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, Boston & Providence Railroad Corporation, et al., appellants, *vs.* Interstate Commerce Commission, No. 5466, January term, 1932, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 19th day of February, A. D. 1932.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 1932

Supreme Court of the United States

No. 773, October Term, 1931

INTERSTATE COMMERCE COMMISSION, PETITIONER

vs.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, OLD COLONY Railroad Company, Boston & Providence Railroad Corporation, et al.

Order allowing certiorari

Filed April 18, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

FILE COPY

Office Supreme Court, U. S.
FILED
MAR 7 1932
CHARLES ELMORE CROPLEY
CLERK

No. 15

In the Supreme Court of the United States

OCTOBER TERM, 1931

INTERSTATE COMMERCE COMMISSION, PETITIONER

v.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

CHARLES W. NEEDHAM,
General Solicitor,
THOMAS M. ROSS,
Assistant General Solicitor,
ROBERT E. FREER,
Attorney,
MARY B. LINKINS,
Attorney,
For Interstate Commerce Commission.

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 773

INTERSTATE COMMERCE COMMISSION, PETITIONER

v.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, Old Colony Railroad Company, Boston & Providence Railroad Corporation (Massachusetts), Boston & Providence Railroad Corporation (Rhode Island), Providence, Warren & Bristol Railroad Company, The Harlem River and Port Chester Railroad Company, Holyoke & Westfield Railroad Company, Providence & Worcester Railroad Company, Chatham Railroad Company, and Norwich & Worcester Railroad Company

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PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

May it Please the Court:

The petitioner, Interstate Commerce Commission, respectfully prays that a writ of certiorari issue in accordance with the provisions of subsection (a) of section 240 of the Judicial Code, as

amended and reenacted by the Act of February 13, 1925 (c. 229, 43 Stat. 938, 28 U. S. C. A., §347), to review a judgment of the Court of Appeals of the District of Columbia, entered January 18, 1932. (R. 655.) The said judgment reversed a judgment of the Supreme Court of the District of Columbia which had dismissed a petition for writ of mandamus to compel the Commission to find and include in its reported valuation of the respondent's property under Sec. 19a of the Interstate Commerce Act the value of the respondent's rights to participate in the use of terminal facilities in the cities of New York and Boston owned and operated by other common carriers. (R. 450.)

The petition respectfully shows to this Honorable Court:

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

The controversy had its inception in an investigation instituted by the Commission under Sec. 19a of the Interstate Commerce Act (U. S. C., Title 49, Sec. 19a) to find and report the value as of June 30, 1915, of the property owned or used by The New York, New Haven & Hartford Railroad Company and its several lessors and subsidiaries, the other respondents herein, all hereinafter collectively called the New Haven.

The New Haven operates certain owned and leased lines of railroad in Massachusetts, Rhode Island, Connecticut, and New York. (R. 434.) Its

tracks enter the State of New York from Connecticut at or near Port Chester, and at Woodlawn connect with the tracks of the New York and Harlem Railroad Company, hereinafter called the Harlem, now operated under lease by the New York Central Railroad System, hereinafter called the Central, which also owns a majority of the Harlem's stock. (R. 476.) From Woodlawn south to and into Grand Central Station, a distance of about 12 miles, the New Haven passenger trains operate over the Harlem's tracks and the New Haven and the Central use the station in common, all pursuant to two contracts hereinafter mentioned. (R. 434–437.) At Boston, Massachusetts, the New Haven's tracks connect with those of the Boston Terminal Company, hereinafter called the Boston Terminal, and from the point of connection to and into the South Station at Boston the New Haven passenger trains operate over the Boston Terminal's tracks, and the New Haven and the Central, as lessee of the Boston and Albany, participate in the use of the Boston Terminal's South Station pursuant to Chap. 516, Laws of Massachusetts, 1896. (R. 6.)

The Grand Central Terminal and its approaches in New York and the South Station in Boston belong to and are operated by other common carriers to whom the Commission inventoried and valued them as "owned and used." (R. 425, 428–429.)

The proceeding before the Commission.—At the valuation hearing the New Haven presented in evidence certain charters, contracts, agreements, and

legislative enactments relating to its rights to use these passenger terminals and contended in each instance that such rights of use were not ordinary trackage rights, but estates in the property which should be valued under the Act.

The New York Terminal.—The New Haven's right to use the Harlem's tracks is held under an "Agreement and Contract of Transportation" (R. 520) entered into between the Harlem and a predecessor of the New Haven on March 17, 1848, by which the Harlem granted to the New Haven the right—

> to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlem Railroad Company from the point of junction aforesaid to and into the city of New York, * * * (R. 435, 520.)

Under this agreement the New Haven was to furnish its own haulage and to pay the Harlem "as full compensation for the use and occupation of their track or tracks as aforesaid a certain sum for each passenger transported," and a portion of the tariff rates received for the transportation of express and mail matters. (R. 521–522.) The Harlem was to "keep its road from the aforesaid point of junction to the termination of the part thereof to be used by the New York and New Haven Railroad Company in good and sufficient repair." (R. 524.) The contract was to continue in force

during the terms of their charters, respectively, and for all renewals thereof, and contained a provision for the adjustment of compensation every five years by agreement, or, in event of failure to agree, by arbitration. (R. 524.)

By Chapter 143 of the Laws of 1848 the New York Legislature authorized the New Haven to enter upon and run its cars and engines over the road of the Harlem Company from the point of junction into the City of New York, upon such terms and to such point "as has been or may hereafter be agreed upon by and between said Companies." (R. 436, 529–530.)

Pursuant to the statute and agreement, the New Haven connected its tracks with those of the Harlem, and ever since has operated its trains over them into the City of New York. (R. 436.)

On April 1, 1873, the Harlem road leased all of its steam railroad property to the Central for a term of 401 years, subject to the provisions of the contract between the Harlem and the New Haven, which was specifically assigned to the Central. This lease has been in full force and effect down to the present time. (R. 436.)

By agreement dated July 24, 1907, between the Harlem, the Central, and the New Haven, provision was made for certain additions and changes in the New York terminal facilities required by Chapter 425 of the Laws of 1903 of New York (R. 582), and for the construction of the present

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Grand Central Station. The Central agreed at its sole expense to acquire all lands, make the changes, and construct the railroad terminal, and acting for itself and the Harlem, leased to the New Haven, during the term of the New Haven's charter and all renewals thereof—

> the use, in common with the Central Company, subject to all the provisions of this agreement, of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic. (R. 595.)

with the proviso that the New Haven's right to the use of the terminal should in no event exceed 50% of its maximum capacity. (R. 437, 595.) As compensation the New Haven was to pay to the Central that proportion of four and one quarter per cent interest on the cost of construction and of the annual expenses for maintenance and operation "which the use of the Railroad Terminal by the New Haven Company bears to the entire use thereof," determined on the basis of "wheelage." (R. 595–597.)

The New Haven contributed no part of the cost of the terminal nor of the four-tracking of the Harlem's main line from Woodlawn to the Terminal. (R. 437.)

The Boston Terminal.—By act of June 9, 1896, the Massachusetts Legislature incorporated the Boston Terminal Company for the purpose of constructing and operating a union passenger station

in the City of Boston, and to provide adequate terminal facilities for several railroad companies entering the city, and for accommodation of the public. (R. 616.) The five several railroad companies were authorized to subscribe for the capital stock of the Terminal Company, which was fixed at $500,000, in equal amounts. The management of the station and its approaches was to be vested in a board of five trustees, one to be appointed by each of the railroad companies from its board of directors. The Terminal Company was authorized to raise money by the issuance of bonds secured by mortgages or pledges of its property. (R. 617.)

By Section 9 of the Act, it was provided that the said railroad companies should, upon its completion, use the station and the approaches for all their terminal passenger business in Boston, instead of the terminals then used by them. (R. 620.)

Other provisions of the Act required the railroads to pay to the Terminal Company, in proportion to the use made, such amounts as should be necessary to pay the expenses of the Terminal Company's corporate administration and the maintenance and operation of the station and facilities connected therewith, including insurance, repairs, taxes and assessments, interest upon its bonds, and a dividend not to exceed 4% per annum upon its capital stock. The proportion of use by the several companies was to be fixed by agreement between them or, in case of failure to agree, by the Massachusetts Board of

Railway Commissioners, and payment made by the companies should be deemed "a part of their operating expenses." (R. 621.)

Pursuant to this statute, the Boston Terminal Company was incorporated, each of the five companies subscribed to its capital stock, and the terminal known as the South Station and its approaches were constructed by the Boston Terminal Company, which has ever since operated the property.

The New Haven, having acquired the property of the New England Company through merger and leased the property of the Boston and Providence and Old Colony Companies, is now in control of 80% of the capital stock of the Terminal Company, and the Central as lessee of the Boston and Albany controls the balance. (R. 439.)

The issue of the nature of the New Haven's rights under the contracts and statutory enactments, together with many others raised by the New Haven, was submitted to the Commission on June 15, 1926.

The Commission's decision.—After considering the evidence the Commission reported its valuation for rate-making purposes of the respondents' property in a report and order dated November 13, 1929. (30 I. C. C. Val. Rep. 1–291.) The full text appears in the record at pages 24–388.

In this report and order the Commission considers and discusses the matter of the New Haven's rights (R. 60–67) and holds adversely to the New Haven's contention (R. 66–67, 76).

In respect of all the New York property the Commission recites in substance that the New Haven has no investment therein (R. 63); that the property is maintained solely at the expense of the Central, which owns and uses it (R. 64); and that the contracts contain no provision for acquiring a part ownership or an interest in the fee (R. 64, 66).

It further recites that Sec. 15a provides that values found under Sec. 19a shall be deemed to be the values for rate-making purposes and in substance requires that rental payments for trackage rights, or other joint-facility rents, shall be deducted as operating expenses in computing allowable net railway operating income; and that under such provisions to value the trackage rights for the purposes of rate-making would result in duplication.

The Commission noted that only the magnitude distinguished the New Haven's rights from many similar rights of carriers to enjoy the use of other carrier's property along with the owners (R. 65) and it held that for the purpose of ascertaining a value for rate-making purposes, no specific value should be reported for these commercially valuable contract rights (R. 66–67). As to the property of the Boston Terminal Company, the Commission recites that it has heretofore classified and valued all of that company's property as owned and used by it as a common carrier in the valuation of the *Boston Terminal Company,* 103 I. C. C. 707, and it declines to assign any specific value to the rights

of the New Haven therein. (R. 67.) The Commission in its order designates the rights collectively as "important trackage rights." (R. 76.)

For the purpose of explaining the methods of valuation employed, the order made reference to and incorporated therein that portion of the Commission's decision in its first valuation case, *Texas Midland Railroad,* 75 I. C. C. 1, 108–182 (R. 127), designated as Appendix 3, wherein such methods were determined and stated. The parts of that decision relating to trackage rights appear in the record at pages 388–396.

The proceedings in the Supreme Court of the District.—The New Haven, alleging that its rights constitute estates in the terminal properties, that the Commission is without authority to limit its finding to a value for rate making purposes, and that the Commission's refusal to value the rights disregards a mandatory duty under Sec. 19a, sought a writ of mandamus from the Supreme Court of the District of Columbia. (R. 1–24.)

The Commission's answer (R. 404–423) sets out that it had fully considered the New Haven's contention and decided adversely thereto; that it had fully complied with the statute in valuing all of the physical property mentioned in the petition to the owning carriers and making appropriate reference to the "rights" under its rules and methods; that the Act contained no specific instructions as to the valuation of trackage rights; that it had to

exercise discretion to interpret the Act; that it interprets the Act as not requiring the valuation of such rights, alleged to be merely licenses dependent upon rental as shown by the New Haven's sworn reports to the Commission (R. 405–419). The answer also alleged the failure of the New Haven's petition to state a cause of action for mandamus, reciting that said petition sought to use mandamus to annul the final valuation and reverse the decision and to direct the Commission to exercise its discretion in a particular way to interpret the Act so as to apportion to the New Haven part of the value found for the property of third parties not parties to the case by recognizing the New Haven's alleged title in the property. (R. 420–422.)

The case was submitted in that Court upon the petition, the rule to show cause, the answer and further pleadings, and upon oral and documentary evidence offered at the trial, which occurred on February 12, 1931.

The opinion of the Supreme Court.—The Court, in a memorandum opinion by Chief Justice Alfred A. Wheat filed April 2, 1931, refused the writ (not reported, but included in record pp. 434–449).

This opinion held that the Commission's method of valuation, adopted in the *Texas Midland Railroad* case and steadfastly followed in more than a thousand valuations since reported, was so reasonable and so consistent with the purpose of the Act that any other would lead to unjust and unreason-

able results (R. 442); that the New Haven's rights were merely trackage or terminal rights under *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.*, 163 U. S. 564 (R. 445, 447); and that "the Commission did not err in declining to value the rights of the relator" (R. 449).

The opinion of the Court of Appeals.—Upon appeal to the Court of Appeals of the District of Columbia the judgment was reversed by judgment entered by concurrence of four justices, one not sitting, on January 18, 1932. The accompanying opinion by Mr. Justice Van Orsdel held, among other things, that the case of *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.*, 163 U. S. 564, relied upon by the Supreme Court of the District of Columbia, had little or no bearing on the issues herein presented because the contract there "granted merely trackage rights" (R. 647); that the New Haven owns and uses a perpetual easement which coupled with a franchise constitutes a dominant servitude in the New York Terminal approaches (R. 643); that it owns and uses a base fee in the undivided half of the Grand Central Terminal (R. 646); that the Boston Terminal Company is little more than a holding company and that the New Haven is, with two of its subsidiaries and another railroad, one of the "real owners" of the Boston property (R. 648); that the value directed to be found by Sec. 19a is not limited to a value for rate-making purposes, which is stated to be

only one of a number of objects for which the Commission's valuations are to be *prima facie* evidence (R. 651); that the Valuation Act directly and expressly requires the valuation of all property whether physical or incorporeal, including "the joint use of property owned by other carriers" (R. 651); that the Commission's failure to comply therewith is not an exercise of discretion but a refusal to act (R. 654); that this case is distinguishable from its prior holding in *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission,* 6 Fed. (2d) 692 (R. 652); and that under the decision of this Court in *Kansas City So. Ry.* v. *Int. Com. Comm.,* 252 U. S. 178, mandamus will lie to compel the Commission to assume jurisdiction of the specific duty of valuing these "specific well-defined portions of the road which they refused to value" (R. 653–654).

THE QUESTIONS PRESENTED

This petition presents for a decision by this Honorable Court the following questions:

1. Whether in an action for mandamus the Courts of the District of Columbia can review the Commission's classification of a carrier's rights as important trackage rights and determine that they constitute estates in the physical properties of other carriers not parties to the action?

2. Whether Sec. 19a of the Interstate Commerce Act so explicitly requires the Commission to ascertain and report a specific value for all incorporeal

property, including trackage rights in property owned and used by other carriers, that the Commission is without discretion in the matter and may be compelled by mandamus to specifically value such use of property?

3. Whether in its report of its valuation investigation under the Act, the Commission may limit its specific findings of a single-sum value to a value for rate-making purposes?

4. Whether the New Haven's rights to participate in the use of tracks and terminals belonging to and operated by other carriers, upon payment of a compensation for the use enjoyed, constitute estates in the property and not ordinary trackage rights?

B

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The reasons relied on by the petitioner for the granting of a writ of certiorari and upon which the petitioner believes that the writ ought to be granted are as follows:

General Importance

The case involves a question of general importance in that—

(1) The Commission's valuations of all the steam railroads of the country involving more than 1,000 valuation decisions have been made upon the basis of the Commission's interpretation of the Statute now held to be erroneous by the Court of

Appeals, and the decision of that Court, if not reversed, will require the revaluation of all these carriers.

(2) The decision requires that property once fully valued to the carrier owning and using the same must receive a further valuation in the report of the carrier having rights of use therein, and thereby results in a duplication of values which must be used for rate-making purposes.

(3) We read the decision as in conflict with the prior decision of the same Court in *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission,* 6 Fed. (2d) 692, and also, as to Boston Terminal, as in conflict with a decision of the United States Circuit Court of Appeals (1st Circuit) in *Boston Terminal Co.* v. *Gill,* 246 Fed. 664.

Construction of Federal Statute

The question of the duty of the Commission in respect to reporting a single-sum value and its refusal to specifically value trackage rights involves the construction of an important statute of the United States which has not been but should be settled by this Court.

(1) We read the decision of this Court in *Kansas City So. Ry.* v. *Int. Com. Comm.,* 252 U. S. 178, held to be decisive by the Court of Appeals, as inapplicable.

(2) A final valuation report under Sec. 19a being only *prima facie* evidence of value and there being

a complete remedy for correction of errors therein when such report is used in evidence, may not, prior to its use, be subjected to court review for erroneous conclusions, either by mandamus or by proceedings in equity. *United States* v. *Los Angeles R. R.*, 273 U. S. 299.

Erroneous Construction of Applicable Decision

The decision of the Court of Appeals of the District of Columbia in respect of the nature of the New Haven's rights rests upon an erroneous construction of the applicable decision of this court in *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.*, 163 U. S. 564.

BRIEF IN SUPPORT OF PETITION

I

THE OPINIONS OF THE COURTS BELOW

The memorandum opinion rendered by the Supreme Court of the District of Columbia is unreported, but appears on pages 434–449 of the record. The opinion of the Court of Appeals of the District of Columbia rendered January 18, 1932, has not been officially reported, but will be found on pages 641–655 of the record. The opinion and order of the Commission is reported as 30 I. C. C. Val. Rep. 1 and will be found at pages 24–388 of the record.

II

JURISDICTION

The order of the Supreme Court of the District of Columbia dismissing the petition for a writ of mandamus was entered April 3, 1931. From this order an appeal was prosecuted to the Court of Appeals of the District of Columbia (R. 450–487), which, on January 18, 1932, made its order and handed down its opinion reversing the judgment of the said lower court (R. 655).

The jurisdiction of this Court is invoked under subsection (a) of Section 240 of the Judicial Code as amended and reenacted by Act of February 13, 1925 (c. 229, 43 Stat. 938, 28 U. S. C. A. § 347).

III

STATEMENT OF THE CASE

The Court is respectfully referred to the statement of the case hereinbefore contained under heading "A" in the petition for the writ of certiorari.

IV

THE STATUTE

The pertinent provisions of Sec. 19a of the Act (Sec. 19a, Title 49, U. S. C.) are as follows:

> SEC. 19a (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. * * * The Commission shall make an inventory

which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property as nearly as practicable in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of same, together with an analysis of the methods of valuation employed.

* * * * *

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this Act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) * * * all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this Act shall have the full force and effect of law. * * *

* * * * *

(h) Whenever the Commission shall have completed the tentative valuation of the

property of any common carrier, as herein directed, and before such valuation shall become final, the Commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the en-

forcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

V

ARGUMENT

A

1. The case involves a question of general importance in that the commission's valuations of all the steam railroads of the country, involving more than 1,000 valuations, have been made upon the basis of the commission's interpretation of the statute now held to be erroneous by the Court of Appeals, and the decision of that court, if not reversed, will require the revaluation of all these carriers

The enactment by Congress on March 1, 1913, of what is now known as the valuation section of the Interstate Commerce Act (c. 92, 37 Stat. 701, Title 49, U. S. C. Sec. 19a) placed upon the Commission the stupendous task of inventorying and valuing "all the property owned or used by every common carrier" subject to the Act. The legislation had its origin partly in the wide public belief that a fair valuation of the railroad properties would indicate a large overcapitalization and justify rate reductions. But such legislation had been repeatedly urged upon Congress by the Commission

upon the ground that in administering the rate-making provisions of the Act it was seriously handicapped by having no means of testing the accuracy of estimates of value presented by interested carriers in rate hearings.

For several years after the enactment the Commission was engaged in the taking of field inventories of physical property and it was not until July 31, 1918, that it published its first final report of the valuation of a carrier. *Texas Midland Railroad,* 75 I. C. C. 1. Most of the many valuation questions which the Commission had to decide at the inception of its work were involved in this case, and the Commission sought to make of the decision as far as practicable a complete statement of the methods and principles adopted by it for the valuation of railroads generally. For this purpose it prepared a "statement of methods" which it incorporated in the Texas Midland report as "Appendix 3," and this appendix, by reference thereto, has been made a part of all subsequent valuations.

Having obtained complete inventories of the property owned or used by all carriers, one of the first and most important questions presented was to determine the proper methods of reporting the value of property owned by one carrier, but used by others under lease or the various forms of contracts for trackage rights commonly found to exist. In its appendix to the Texas Midland case (p. 122–123; R. 388–389) the Commission stated:

> Ordinarily carrier property is inventoried in the name of the owner; that is, the details are shown in the inventory of the owner and not elsewhere. In case of jointly owned property the details would appear in the inventory of each owner.
>
> Where property is owned by one carrier and exclusively used by another carrier the details would appear in the inventory of the owner, but the total amount would be shown in the inventory of the user as property used by that carrier.
>
> * * * * *
>
> It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use.

In the absence of what is deemed to be any specific direction in the Act for the treatment to be accorded "trackage rights," it announced a method which it thought to be reasonable and to meet the requirements of the Act:

> Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common-carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The extent and terms

> of the use appear also in the inventory of the using carrier or carriers.
>
> It has been our endeavor to adopt a method with respect to this class of property which will permit of reporting the three cost values for all property used for common-carrier purposes without duplication. When it is borne in mind that many railroads are not operated exclusively by their owners, but that certain portions thereof are used by one or more carriers by virtue of trackage rights, etc., it is apparent that duplication of values for such jointly used property will result unless a proper course of procedure is pursued. The necessity of securing reproduction new and reproduction less depreciation values without duplication is manifest, since these values must necessarily be considered as factors entering into the determination of an ultimate value of railroad property (p. 21, R. 392).

To the contention that the use should be valued, and in explanation of its rejection of a value for the right of use, the Commission said (pp. 23–24, R. 395, 396):

> It is a sufficient answer to this contention to state it is now universally accepted that it is the fair value of the property used by the public service corporation in serving the public which is to govern in fixing rates. *San Diego Land Co.* v. *National City,* 174 U. S. 739. This being true, the value of that property can not be increased or diminished

by contracts or other arrangements between the carriers themselves. In the absence of an improper payment as rental the public is not concerned with the acts of carriers between themselves. The law requires the ascertainment of values for property owned or used, but not the value of the use.

* * * * *

When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress, and the public will be informed with respect to every piece of property used in serving the public, with the single exception of that insignificant portion which is privately owned and partially used by common carriers. The inventories of the individual carriers will contain the cost values in detail with respect to property owned; the cost values in detail for property exclusively used by them but owned by a noncarrier; total cost values for property exclusively used by them but owned by a common carrier; a description of the terms and use of jointly used property of others with a reference to the report of the owning carrier for details in regard thereto; and a description of the terms and use of jointly used property owned by them with a reference to the reports of the using carrier or carriers for details in regard thereto. All the property used in serving the public will be inventoried and valued, and will be inventoried and valued *once and only once.* There will be and should be no duplications. (Italics ours.)

In respect to its conclusion the Commission stated:

> It is believed that the method adopted fully complies with the statute (p. 124, R. 390).

The method announced above has been uniformly followed by the Commission since 1918 and was employed in the instant case. The valuation of the steam railroads of the United States, comprising more than 1,000 valuation decisions, has been practically completed upon this method and interpretation of the statute.

Most operating carriers, to greater or less extent, have rights of use in property owned and used by other common carriers. The principles governing the classification for valuation purposes of such property must be the same whether the property involved be of major or minor size. The decision of the Court of Appeals, holding that the Act explicitly commands the Commission to specifically value the rights of use of the New Haven in property held and used by other carriers, will, if not reversed, necessitate the remaking of most, if not all, of the Commission's valuations. This can only be done at great expense to the public and with consequent delay in the uses of such valuations.

Sec. 19a of the Act provides that valuations made under it shall be *prima facie* evidence of the value of the property in all proceedings under the Act and in judicial proceedings for the enforcement or setting aside of orders of the Commission. At the

date of the passage of the Valuation Act rate making was the only purpose for which the Commission had occasion to use a value of the properties used by a carrier for common-carrier purposes. From that date reports have been made to Congress annually informing it of the valuations made in compliance with its direction. By the Transportation Act of 1920 (c. 91, 41 Stat. 456) Congress made amendments to the Interstate Commerce Act, the most important of which were the rate making and recapture provisions contained in Sec. 422 (41 Stat. 488), now known as Sec. 15a of the Act (U. S. C., Title 49, Sec. 15a). In this section Congress again dealt with the subject of valuation and specified purposes for which valuations made under Sec. 19a should be used. In par. (2) it provided:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

In par. (4) it provided:

> For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

This positive direction to the Commission in determining aggregate values to "give due consideration to all the elements of value recognized by the law of the land for rate-making purposes," coupled with the express declaration immediately following that values of individual carriers once *finally ascertained* under Sec. 19a *shall be deemed to be* the values thereof for the purposes of computing aggregate value, amounted to a legislative direction to the Commission that values should there-

after be determined in such manner and upon consideration of such elements that they might properly be used for rate-making purposes.

In its fifth valuation decision wherein it announced for the first time a final single-sum value of the property of any carrier, the Commission noted the above requirements of the Act (*San Pedro, Los Angeles & Salt Lake R. R. Co.*, decided June 7, 1923, 75 I. C. C. 463, 504–507), declared that the value of the property of a common carrier could not be said to be the same for all purposes, irrespective of the use to be made of that value, and concluded that the final single-sum value which it should ascertain and report is the value for rate-making purposes.

In every subsequent valuation decision, including that of the New Haven, the Commission has stated the single-sum values found to be those for rate-making purposes. In respect to the New Haven's rights to participate in the use of property held and operated by other carriers, it stated that such rights should not be valued for rate-making purposes.

In its decision the Court of Appeals has stated: "We must not be understood as holding that the valuation of the New Haven property fixed by the Commission is not a proper valuation for rate-making purposes." (R. 651.) But it held that the valuation required by the statute could not be subjected to the limitation of a value for rate-mak-

ing purposes, and that the Commission was required to include the value of the New Haven's rights. The effect of the decision, as read by us, is to require that valuations made for other than rate-making purposes shall be used in establishing rates.

In view of the foregoing considerations, the question in respect to the matters said to be explicitly required by the Act is a matter of great general importance.

2. The case involves a question of general importance in that to require that property once fully valued to the carrier owning and using the same must receive a further valuation in the report of the carrier having rights of use therein results in a duplication of values which must be used for rate-making purposes

All of the property comprising the New York and Boston terminals in question has been inventoried and valued to the New York Central and its controlled subsidiary the Harlem, or to the Boston Terminal Company. These companies hold the record title to the terminal properties, have issued the securities for and made the entire investment covering their purchase or construction, have possession of and control and operate the same. As the owners they are entitled to and receive the rentals paid by the New Haven for its rights to operate over the property and such revenues become part of their net railway operating incomes. The extent of the New Haven's rights of use are shown in the reports of the valuation of each carrier. In re-

porting the single-sum values for the Central and the Boston Terminal, as well as the New Haven, the Commission recites that it has given consideration to the intangible elements of value which inhere in the physical properties, including appreciation, going concern, etc. (R. 73, 87.) Having done this, the Commission thought that it had complied with the requirements of the statute and valued once "all the property."

Nevertheless, the Court holds that the Commission assumed jurisdiction to value only a part of the New Haven's property "segregating specific well-defined portions of the road," to wit, the parts of the New York and Boston terminals over which the New Haven runs its trains, "which they refuse to value." (R. 654.)

If such property, once fully valued to the carriers which own and use the same, must also be included in the inventories and valuations of carriers which operate thereover upon the payment of rental, as we read the decision to require, a duplication of values results.

Two railroads whose properties have been fully valued can not, it would seem, by the device of entering into contracts for the use of each other's property thereby create *additional* property which must receive further valuation. Such contract arrangements undoubtedly create new rights and obligations between the contracting parties, but they call for no investment of money and do not add

anything to the *property* which is devoted to public use.

The decision would, as we read it, not only result in a duplication of property values upon which the public must pay a return in rates, but it results in a duplication of the *return* on property held.

By the express requirement of par. (1) of Sec. 15a (U. S. C., Title 49, Sec. 15a), rentals paid for use of joint facilities are deducted by the paying carrier in computing net railway operating income, just as all operating expenses are deducted. A carrier is unquestionably entitled to earn from rates an amount sufficient to pay all operating expenses and in addition a fair return on the value of its property; but to allow it to receive a return on the value of another carrier's property and, at the same time, to charge to operating expenses rentals for the use of that property results in the public paying and such carrier receiving a double return on that "property." This would reward with a double return on property the carrier which uses the property of others under trackage rights and by comparison penalize with a single return the carrier which acquires the use of property through investment in the ownership thereof.

The rentals paid by the New Haven are typical examples of "joint facility rents" as defined in the Commission's classification of accounts, as referred to in Sec. 15a and as consistently reported and treated by the New Haven itself.

The foregoing is submitted as indicating that the Court's decision has far reaching consequences in respect to proper methods of valuation and regulation of common carriers and that the questions involved are of great general importance.

3. The case involves a question of general importance in that we read the decision of the Court of Appeals as in conflict with its prior decision in *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Comm.*, 6 Fed. (2d) 692, and as to Boston Terminal, as in conflict with a decision of the United States Circuit Court of Appeals in *Boston Terminal Co.* v. *Gill*, 246 Fed. 664

The decision of the Court of Appeals of the District of Columbia in *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission*, 55 App. D. C. 389, 6 Fed. (2d) 692 (June 1, 1925), resulted from an action for mandamus brought to require the Commission to perform the alleged plain and explicit ministerial duty under Sec. 19a of ascertaining and reporting "the value of all the property owned or used by every common carrier." The petition alleged that the Commission had held that it would separately value the property of the Kansas City Terminal Railway Company—a Missouri corporation owning terminal properties in Kansas City—and that it had failed and refused to include in the inventory or single-sum value of the petitioner's property anything to represent its interest or right of use therein. It alleged that the petitioner with eleven

other railroads owned all the stock of the Terminal Company and had entered into contracts to use its property for a period of 200 years upon the payment of rental sufficient to pay operating and maintenance expenses and interest on its securities, the entire rental to be apportioned among the several using carriers in proportion to the extent to which each made use of the facilities. It stated:

> The Terminal Company is, in substance, a joint agency of each of the twelve constituent lines in the performance of its freight and passenger service in Kansas City, Missouri. Each is the equitable owner of one-twelfth of the terminal property.

The case being heard upon a motion to dismiss the facts stated in the petition, for the purpose of the decision, were taken as true. The Supreme Court of the District of Columbia granted the motion to dismiss and on appeal the Court of Appeals, affirming the decision, said (p. 693):

> * * * The appellants, however, contend that the Commission failed to obey the mandate of the act in many particulars, among them the following, to wit: That it failed to ascertain and report the economic or exchange value of the common carrier property, *but instead reported a so-called rate-making value thereof;* * * *.
>
> Accordingly they prayed for a writ of mandamus, directing and requiring the Commission (a) to investigate, ascertain, and report the true, economic value of all

said properties; * * * (e) to ascertain and report the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and the value of appellants' *right and interest in certain specified properties, to wit, the Kansas City Terminal Railway Company,* * * *.

The reports of the Commission are brought by reference into the record. They disclose that each of these objections, *including the reference to properties alleged to have been omitted,* was presented to the Commission by the appellants, and was fully investigated, considered, and passed upon by it.

* * * * *

It is true that the Commission did not base its valuation upon the earning capacity of the carrier properties to the extent claimed by the appellants, nor upon the market value of their outstanding securities. Nevertheless it is manifest that the Commission fully assumed and exercised the authority or jurisdiction imposed upon it by the act, and that the real complaint of the appellants is not that the Commission refused to consider the points in question, but that it considered them and thereupon decided them erroneously. The real relief sought by the appellants, accordingly, is that the valuation reported by the Commission be set aside, and other valuations ordered. This clearly brings the case within the well-established rule that the action of mandamus can not be used as a substitute

> for an appeal, nor as a writ of error. (Italics ours.) (Certiorari denied, 269 U. S. 570.)

We read the foregoing decision as plainly holding that Sec. 19a of the Act contains no provision which could be construed as explicitly commanding the Commission to find a value other than for rate-making purposes, nor any explicitly directing the Commission to inventory or value rights of use held by one carrier in property owned and used by another common carrier. The Court of Appeals distinguishes its former decision with the statement: "There the commission valued all the property of the carrier; here it refused to value certain of the property." (R. 652.)

Inasmuch as the Kansas City Southern's rights to operate its trains into the Kansas City terminal were in essential respects similar to the rights of the New Haven to operate its trains into the New York and Boston terminals, and inasmuch as the Commission pursued the same methods of valuation in both instances, we read the lower Court's decision in the present case as being in conflict with its former decision.

The decision of the Court of Appeals is also read by us to be in conflict with *Boston Terminal Co.* v. *Gill,* 246 Fed. 664. In the latter case the United States Circuit Court of Appeals for the First Circuit affirmed and upheld a decision of the United States District Court that the Boston Terminal

Company is a corporation organized for profit and engaged in the business of owning and operating its terminal in Boston for profit so as to render it liable for an excise tax of the United States. The corporation insisted that it was not so organized or engaged in business and that the business conducted on its property was that of the individual railroads using its property under Chapter 516, Laws of Mass., 1896. (Ex. 16, R. 616.) In the instant case the New Haven admits in its reply that the Boston Terminal Company owns and operates the Boston Terminal property. (R. 429.) Notwithstanding this admission, the Court of Appeals finds in its opinion that "the Terminal Corporation as such, assumed no liability either in construction, maintenance, operation, or otherwise," and that the Court would therefore look "through the corporate shell of the Terminal Company" to see "the real owners, the railway companies" (R. 648), and it held that the rights of the New Haven to be valued were "the ownership and perpetual right of use" in the terminal property. We, therefore, read the opinion of the Court of Appeals herein as in direct conflict with the opinion of the Circuit Court of Appeals.

These decisions, conflicting as we read them, evidence the general importance of the matter under consideration.

B

The question of the duty of the Commission in respect to reporting a single-sum value and its refusal to specifically value trackage rights involves the construction of an important statute of the United States which has not been but should be settled by this Court

(1) We read the decision of this Court in *Kansas City So. Ry.* v. *Int. Com. Comm.*, 252 U. S. 178, held to be decisive by the Court of Appeals, as inapplicable

The New Haven's petition seeks a writ of mandamus to compel the Commission to perform its alleged ministerial duty under Sec. 19a. The issue in such an action against the Commission "is confined to a consideration of the face of the statute and the non-action of the Commission in a matter purely ministerial." (*Kansas City So. Ry.* v. *Int. Com. Comm.*, 252 U. S. 178, 187.)

That case arose out of paragraph Second of Sec. 19a, which, as originally enacted, required the Commission to find and report in respect to lands, *inter alia*, "separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." These words were repealed by Act of June 7, 1922 (42 Stat. 624). Prior to the repeal the Commission, relying on the impossibility of making a rational determination in a matter so inherently speculative, and notwithstanding the plain language of the statute, in its valuation of the Kansas City Southern Railway Company, held that it could not determine such excess costs and refused to hear proof concerning the same.

An action for mandamus was instituted by the railway company and the case eventually reached this Court. Examining the face of the statute and the inaction of the Commission, this Court directed the issuance of a writ of mandamus to compel the Commission to perform its plain ministerial duty to hear the proof and to act upon it.

In our opinion, the absence of any such explicit and specific language in Sec. 19a in respect to "trackage rights" distinguishes and renders inapplicable the decision of this Court in *Kansas City So. Ry.* v. *Int. Com. Comm., supra.*

It is true that the Act contains the general and indefinite direction to value "all the property owned or used by every common carrier" limited by the phrase "as hereinafter provided." These words do not *explicitly* instruct the Commission how to treat property in which "trackage rights" exist and no language in the remainder of the Act directs the Commission to find or report a value for "trackage rights." The ambiguity of the statute in this respect required the Commission to interpret its duty thereunder in the light of the intent of the Congress. In finding that an arrangement between carriers for trackage rights creates no additional *property* as that term is used in the Act, the Commission was properly acting within its administrative discretion.

The questions here presented are, therefore, not settled by the decision of this Court in *Kansas City*

So. Ry. v. *Int. Com. Comm., supra,* but should be settled in this case upon an examination of the whole of Sec. 19a to determine whether the indefinite and general words "all the property owned or used" therein so explicitly require the Commission to ascertain and report a value for "trackage rights" as to leave the Commission without discretion to determine that a carrier's "trackage rights" do not constitute "property owned or used" within the intent of the statute.

(2) A final valuation report under Sec. 19a, being only prima facie evidence of value and there being a complete remedy for correction of errors therein when such report is used in evidence, may not, prior to its use, be subjected to court review for erroneous conclusions, either by mandamus or by proceedings in equity

The Los Angeles & Salt Lake R. R. Company brought an action to annul an order of the Commission determining the final value of the carrier's property under Sec. 19a of the Act. It alleged various errors committed, including the omission of property and the erroneous finding of a value for rate-making purposes. The District Court, after hearing the evidence in support of the alleged errors, issued an order annulling the final valuation. *Los Angeles & Salt Lake R. R.* v. *United States,* 4 Fed. (2d) 736; 8 Fed. (2d) 747. On appeal this Court declined to consider whether the charges made in the bill were well founded and ordered it dismissed. *United States* v. *Los Angeles R. R.,* 273 U. S. 299.

It pointed out that final valuations were made by the Commission in the "exercise solely of the function of investigation," and operated to deprive the carrier of no property or right. It observed that conceivably errors may occur in each of the 1,800 valuations to be made which would never be of legal significance unless the valuations were used as evidence in some proceeding before the Commission or a court, and it concluded (p. 312):

> Congress has provided adequate remedies for the correction of errors in the final valuation and the classification thereof. The conclusions reached by the Commission must be submitted first in the form of a tentative report, §19a, pars. (f) and (h). When so submitted, the carrier is authorized to file a protest and to be heard thereon, par. (i). * * * When the final report is introduced in evidence the opportunity to contest the correctness of the findings therein made is fully preserved to the carrier; and any error therein may be corrected at the trial. Specific findings may be excluded because of errors committed in making them.

It therefore held (pp. 311, 314):

> * * * Congress did not confer upon the courts power either to direct what this tribunal * * * shall find, or to annul the report, because of errors committed in making it.
>
> * * * * *

Its conclusions, if erroneous in law, may be disregarded.

It is submitted that the New Haven's allegations herein, if well founded, relate to errors such as may be corrected when and if the valuation is used in evidence, and that prior to such use they are not properly to be corrected either by mandamus or proceeding in equity.

C

The decision of the Court of Appeals in respect of the nature of the New Haven's rights rests upon an erroneous construction of the applicable decision of this Court in *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.*, 163 U. S. 564

The introduction to the contract of 1848 (Ex. 7, R. 520) states its subject matter. The words "This Agreement and Contract of Transportation," when taken in conjunction with the grant, which is of "the right to run their trains, engines, and cars * * * over the track * * * into the city of New York," determines the contract to be one for "trackage rights."

Such "Contracts of Transportation" or trackage agreements, conveying no franchise and no part of the property but granting "trackage rights," are commonly made between railroad companies. (*Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.* 163 U. S. 564, 584.)

That case arose out of a contract called a lease, by which the Union Pacific let the Rock Island "into full, equal, and joint possession and use of its main and passing tracks, now located and estab-

lished, or which may be hereafter located and established" between certain points. The Union Pacific soon sought to repudiate the "lease" as *ultra vires* under the decision of this Court in *Thomas* v. *West Jersey R. R. Co.,* 101 U. S. 71, and other cases. The Rock Island brought action for specific performance, which was granted. (47 Fed. 15.) This decision was affirmed by the Circuit Court of Appeals (10 U. S. App. 98) and by this Court. The decision of the case depended upon the nature of the contract and the Rock Island's rights thereunder. This Court, speaking through Mr. Chief Justice Fuller, said, at page 582:

> The possession here spoken of was such possession as the Rock Island Company would have when its engines, cars, and trains were running over the tracks. The company had no possession before its trains came on the tracks or after they had run off of them and while its trains were on the tracks its possession was only of the particular part occupied temporarily while running over them. * * * The contract in this regard was merely an agreement for trackage rights, for running arrangements, a "terminal contract" with compensation on a "mileage" or "wheelage basis," rather than a lease.

The Court of Appeals holds that the foregoing decision "has little or no bearing on the issues here presented" (R. 646–647) because, in the language of the Supreme Court in that case, the contract granted merely "trackage rights" and "by the con-

tract the Pacific company parted with no franchise and was not excluded from any part of its property or the full enjoyment of it. What it agreed to do was to let the Rock Island into such use of the bridge and tracks as it did not need for its own purposes." It further holds that the New Haven owns and uses a "perpetual easement" (R. 643) which, coupled with a franchise, constitutes a "dominant servitude" (R. 643) in the New York terminal approaches, and that it owns and uses a "base fee in the undivided half" (R. 646) of the Grand Central Terminal.

The grant of the contract of 1848 has been in effect continuously and unchanged since March 17, 1848, and the rights and privileges enjoyed thereunder by the New Haven have been designated throughout the intervening years as "trackage rights." The New Haven in its reports to stockholders and in its sworn annual reports to the Commission from 1888 to the time of this suit has continuously reported the "rights" in controversy as "trackage rights" described in the annual reports as "no proprietary rights but only the rights of a licensee." (Ex. 20, R. 636; see also Exs. 17–22, R. 631–637.) We therefore read the decision of the Court of Appeals as in effect making for the parties a new contract.

Where a written contract between parties is plain and has been so understood and acted upon the Court may not by construction make a different contract for the parties.

In *Green et al.* v. *Biddle,* 8 Wheat. 1, 89–90, the Court said:

> * * * where the words of a law, treaty or contract, have a plain and obvious meaning, all construction, in hostility with such meaning, is excluded.

In *Gavinzel* v. *Crump,* 22 Wall. 308, the Court said:

> and the court can not, without evidence authorizing it to be done, import words into the contract which would make it materially different in a vital particular from what it now is.

In *Harrison* v. *Fortlage,* 161 U. S. 57, 63, the Court said:

> The court is not at liberty either to disregard words used by the parties, descriptive of the subject matter, or of any material incident, or to insert words which the parties have not made use of.

In *Green County, Kentucky* v. *Quinlan,* 211 U. S. 582, 596, the Court said:

> But courts can not make for the parties better agreements than they themselves have been satisfied to make.

The opinion of the Supreme Court of the District of Columbia in respect of the nature of the "rights" was based upon the decision of this court in *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co., supra.* Chief Justice Wheat, saying the applicable principle is stated in that case (R. 442) concluded (R. 445):

> The same reasoning applied to the present case leads, I believe, to the conclusion that the New Haven's rights in the tracks of the Harlem are no different in kind from those which the Rock Island had in the tracks of the Union Pacific Company. The language in the one is no broader than that in the other. The purposes, uses and objects were identical, and, as pointed out, by the Supreme Court, 163 U. S. 584, such contracts are frequently made between railroad companies.

The Court of Appeals, we submit, has erroneously failed to apply this applicable decision of this Court, and has erroneously, in a mandamus proceeding, reviewed and reversed the Commission's classification of the New Haven's rights as "trackage rights," and has so considered and construed the contracts as to remake them.

Wherefore the petitioner respectfully requests that a writ of certiorari be issued to the Court of Appeals of the District of Columbia.

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No. ~~773~~ 15

In the Supreme Court of the United States

OCTOBER TERM, 1932

INTERSTATE COMMERCE COMMISSION, PETITIONER

v.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF OF INTERSTATE COMMERCE COMMISSION

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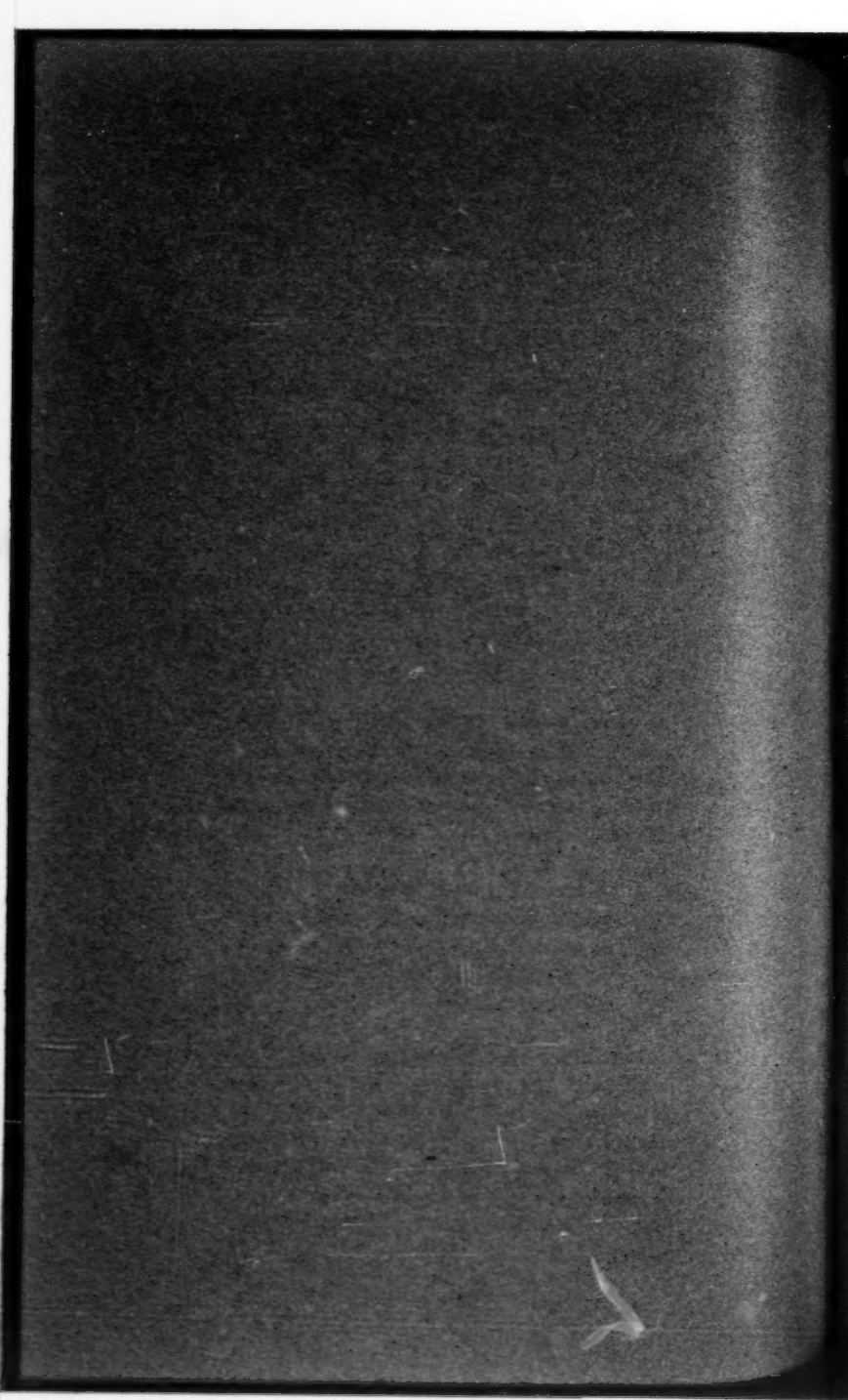

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 773

INTERSTATE COMMERCE COMMISSION, PETITIONER
v.
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BRIEF OF INTERSTATE COMMERCE COMMISSION

OPINIONS

The memorandum opinion of the Supreme Court of the District of Columbia is unreported, but appears on pages 434–449 of the record. The opinion of the Court of Appeals of the District of Columbia is officially reported as 60 App. D. C. 403 and 55 Fed. (2d) 1028, and will be found on pages 641–655 of the record. The opinion and order of the Commission is reported as I. C. C. Val. Rep. Vol. 30, 1, and will be found at pages 24–388 of the record.

JURISDICTION

On July 3, 1930, the New York, New Haven & Hartford Railroad Company and its subsidiaries and lessors, hereinafter collectively referred to as the New Haven, filed a petition for writ of mandamus in the Supreme Court of the District of Columbia to compel the Interstate Commerce Commission, hereinafter called the Commission, to include in its published valuation under Sec. 19a of the Interstate Commerce Act, the "values" of certain trackage rights alleged to be "estates in perpetuity, the legal equivalent of an estate in fee simple, in the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street, and in the Grand Central Terminal" and "a perpetual franchise" in The Boston Terminal Company properties. (R 22–23.)

The judgment of the Supreme Court of the District of Columbia dismissing said petition was entered April 3, 1931. Upon appeal, this judgment was reversed by judgment of the Court of Appeals of the District of Columbia, entered January 18, 1932.

The Commission filed its petition for writ of certiorari under subsection (a) of Sec. 240 of the Judicial Code as amended and reenacted by Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, 28 U. S. C. §347), and said petition was granted by this Court April 18, 1932, — U. S. —, 52 Sup. Ct. Rep. 496.

STATUTES

The pertinent provisions of the Valuation Act (c. 92, 37 Stat. 701), as amended by Act of June 7, 1922 (c. 210, 42 Stat. 624), and commonly known as Sec. 19a of the Interstate Commerce Act (Sec. 19a, title 49 U. S. C.), together with pertinent provisions of Sec. 15a of the Act (c. 91, 41 Stat. 456, 488, Sec. 15a, Title 49 U. S. C.) are set out in an appendix to this brief.

STATEMENT

The controversy had its inception in an investigation instituted by the Commission under Sec. 19a to find and report the value as of June 30, 1915, of the property owned or used by The New York, New Haven & Hartford Railroad Company and its several lessors and subsidiaries, the other respondents herein.

The New Haven operates certain owned and leased lines of railroad in Massachusetts, Rhode Island, Connecticut, and New York. (R. 434.) Its tracks enter the State of New York from Connecticut at or near Port Chester, and at Woodlawn connect with the tracks of the New York and Harlem Railroad Company, hereinafter called the Harlem, now operated under lease by the New York Central Railroad System, hereinafter called the Central, which also owns a majority of the Harlem's stock. (R. 476, and compare I. C. C. Val. Rep. Vol. 27, 1, 208, 440.) From Woodlawn south

to and into Grand Central Station, a distance of about 12 miles, the New Haven passenger trains operate over the Harlem's tracks and the New Haven and the Central use the station in common, all pursuant to two contracts hereinafter mentioned. (R. 434–437.) At Boston, Massachusetts, the New Haven's tracks connect with those of the Boston Terminal Company, hereinafter called the Boston Terminal, and from the point of connection to and into the South Station at Boston the New Haven passenger trains operate over the Boston Terminal's tracks, and the New Haven, and the Central, as lessee of the Boston and Albany, participate in the use of the Boston Terminal's South Station pursuant to Chap. 516, Laws of Massachusetts, 1896. (R. 6.)

The New Haven has no investment either in the Grand Central Terminal and its approaches in New York or in the South Station in Boston. It has consistently reported its operating rights as "trackage rights." (Exs. 17–22, R. 631–637.) Those properties belong to and are operated by other common carriers to whom the Commission, following its usual methods of valuation determined in its first valuation decision (R. 388–396) inventoried and valued them as "owned and used," with appropriate reference to the New Haven's rights (R. 425, 428–429).

The proceeding before the Commission.—At the valuation hearing, the New Haven presented in evi-

dence certain charters, contracts, agreements, and legislative enactments relating to its trackage rights, and contended that such rights to operate into these passenger terminals were not ordinary trackage rights, but estates in, or joint ownerships of, the terminals themselves, part of the values of which should be apportioned to it under the Act. (R. 63, 65.)

The New York Terminal.—The New Haven's trackage right to use the Harlem's tracks jointly with the Central is held under an "Agreement and Contract of Transportation" (R. 520) entered into between the Harlem and a predecessor of the New Haven on March 17, 1848, by which the Harlem granted to the New Haven the right—

> to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlaem Railroad Company from the point of junction aforesaid to and into the city of New York, * * *. (R. 435, 520.)

Under this agreement the New Haven was to furnish its own haulage and to pay the Harlem "as full compensation for the use and occupation of their track or tracks as aforesaid a certain sum for each passenger transported," and a portion of the tariff rates received for the transportation of express and mail matters. (R. 521–522.) The Harlem was to "keep its road from the aforesaid point of junction to the termination of the part

thereof to be used by the New York and New Haven Railroad Company in good and sufficient repair." (R. 524.) The contract was to continue in force during the terms of their charters, respectively, and for all renewals thereof, and contained a provision for the adjustment of compensation every five years by agreement, or, in event of failure to agree, by arbitration. (R. 524.) Two arbitration awards have been made. (R. 526–528.)

By Chapter 143 of the Laws of 1848 the New York Legislature authorized the New Haven to enter upon and run its cars and engines over the road of the Harlem Company from the point of junction into the City of New York, "upon such terms and to such point as has been or may hereafter be agreed upon by and between said Companies; * * *." (R. 529, 530.)

Pursuant to the statute and agreement, the New Haven connected its tracks with those of the Harlem, and ever since has operated its trains over them into the City of New York. (R. 436.)

In April, 1872, the Central, which had theretofore entered New York City only on the Hudson River side of Manhattan Island, connected its road with the Harlem road about five miles north of 42nd Street, and also arranged with the Harlem for the joint use of its tracks from that point into the City of New York. (R. 436.)

On November 1, 1872, the Harlem, the Central, and the New Haven Companies entered into an agreement called a "Tripartite Lease" (Ex. 10, R.

532) under which the Harlem was to construct the original Grand Central Depot at 42nd Street and lease to the Central and the New Haven the use of this station jointly with itself.

On April 1, 1873, the Harlem leased all of its steam railroad property to the Central for a term of 401 years, subject to the provisions of the contract between the Harlem and the New Haven, which was specifically assigned to the Central, except that the Harlem was to keep the contract letting the New Haven use nonleased horse-car tracks below 42nd Street. (Ex. 11, R. 559.) This lease has been in full force and effect down to the present time. (R. 436.)

By a new tripartite agreement dated July 24, 1907, between the Central, the New Haven, and the Harlem superseding and terminating the "Tripartite Lease" of 1872 (R. 608), provision was made for certain additions and changes in the New York terminal facilities required by Chapter 425 of the Laws of 1903 of New York (Ex. 12, R. 582), and for the construction and joint use of the present Grand Central Terminal. The Central agreed at its sole expense to acquire all lands, make the changes, and construct the railroad terminal, and acting for itself and the Harlem, leased to the New Haven, during the term of the New Haven's charter and all renewals thereof (R. 595)—

> *the use,* in common with the Central Company, subject to all the provisions of this agreement, of the said Railroad Terminal

> for the accommodation of the traffic of the New Haven Company, other than freight traffic, * * *. (Italics ours.)

with the proviso that the New Haven's right to the *use* of the terminal should in no event exceed 50 per cent of its maximum capacity. (R. 437, 595.) As compensation the New Haven was to pay to the Central *that proportion* of four and one-quarter per cent interest on the cost of construction and of the annual expenses for maintenance and operation "which the use of the Railroad Terminal by the New Haven Company bears to the entire use thereof," determined on a wheelage basis. (R. 595–597.)

The New Haven contributed no part of the cost of the terminal nor of the depressing and four-tracking of the Harlem's main line from Woodlawn to the terminal. (R. 437.)

The Boston Terminal.—By Act of June 9, 1896, the Massachusetts Legislature incorporated the Boston Terminal Company for the purpose of constructing and maintaining a union passenger station in the City of Boston, and to provide and *operate* adequate teminal facilities for the five several railroad companies entering the city from the south and west and for accommodation of the public. (R. 616.) These five railroad companies, including the New Haven Company, were authorized to subscribe for the capital stock of the Terminal Company, which was fixed at $500,000, in equal

amounts. The management of the station and its approaches was vested in a board of five trustees, one appointed by each of the several railroad companies from its board of directors. The Terminal Company was authorized to raise money by the issuance of bonds secured by mortgages or pledges of its property. (R. 617.)

By Sec. 9 of the Act it was provided that the said railroad companies should, upon its completion, use the station and the approaches for all their terminal passenger business in Boston, instead of the terminals then used by them. (R. 620.)

Other provisions of the Act required the railroads to pay to the Terminal Company, in proportion to the use made, such amounts as should be necessary to pay the expenses of the Terminal Company's corporate administration and the maintenance and operation of the station and facilities connected therewith, including insurance, repairs, taxes, and assessments, interest upon its bonds, and a dividend not to exceed 4 per cent per annum upon its capital stock. The proportion of use by the several companies was to be fixed by agreement between them, or, in case of failure to agree, by the Massachusetts Board of Railway Commissioners, and payment made by the companies should be deemed "a part of their operating expenses." (R. 621.)

Pursuant to the statute, each of the five companies subscribed to the Boston Terminal Com-

pany's capital stock, and the terminal known as the South Station and its approaches were constructed by the Boston Terminal Company, which has ever since operated the property. On June 30, 1915, $14,500,000 of first-mortgage bonds of the Boston Terminal Company were outstanding. (103 I. C. C. 707, 719.)

The New Haven, having acquired the property of the New England Company through merger, and leased the property of Boston and Providence and Old Colony Companies, now controls 80 per cent of the capital stock of the Terminal Company, and the Central, as lessee of the Boston and Albany, controls the balance. (R. 439.)

The issue of the nature of the New Haven's alleged joint ownership under the contracts and statutory enactments, together with many others raised by the New Haven, was submitted to the Commission on June 15, 1926.

The Commission's decision.—After considering the evidence the Commission reported its valuation for rate-making purposes of the respondents' property in a report and order dated November 13, 1929. (I. C. C. Val. Rep. Vol. 30, 1–291.) The full text thereof appears in the record as Exhibit 1 to the New Haven's petition. (R. 24–388.)

In this report and order the Commission considers and fully determines the issue of joint ownership (R. 60–67) holding adversely to the New Haven's contention (R. 66–67, 76).

In respect of all the New York property the Commission recites in substance that the New Haven has no investment therein (R. 63); that the property is maintained solely at the expense of other carriers, which own and use it (R. 64); and that the contracts contain no provision for acquiring a part ownership or an interest in the fee (R. 64, 66).

It further recites that Sec. 15a provides that values found under Sec. 19a shall be deemed to be the values for rate-making purposes and requires that rental payments for trackage rights, or other joint-facility rents, shall be deducted the same as operating expenses in computing allowable net railway operating income; and that under such provisions to value the trackage rights for the purposes of rate making would result in duplication.

The Commission noted that only the magnitude distinguished the New Haven's rights from many similar rights of carriers to enjoy the use of other carrier's property along with the owners to whom the property is valued (R. 65), and it held that for the purpose of ascertaining a value for rate-making purposes no additional specific value should be reported for these commercially valuable contract rights (R. 66–67). As to the property of the Boston Terminal Company, the Commission recites that it has heretofore classified and valued all of that company's property as owned and used by it as a common carrier in the valuation of the *Boston Terminal Company*, 103 I. C. C. 707, and it declines

to assign any additional specific value to the rights of the New Haven therein. (R. 67.) The Commission in its order finds the terminals are not "jointly owned" and designates the rights collectively under "jointly used property" as "important trackage rights" as follows (R. 76):

> *Jointly used property.*—The carrier has *no property classified as jointly owned and used,* except minor facilities. It has *rights to use* the property of other carriers with a road mileage of 53.52 miles and grants trackage rights to other carriers over 54.43 miles of its own road mileage. *Important trackage rights used by the carrier are the Boston terminal, the South Station, with 13.033 miles of all tracks, the entrance to New York, N. Y., from Woodlawn Junction to Fifty-ninth Street, with 45.465 miles of all tracks, the Grand Central Terminal, with 27.173 miles of all tracks, and the Mott Haven Yard, with 13.973 miles of yard tracks.* In Appendix 2, under leased railway property, will be found a statement showing the property used jointly with other carriers and the terms of use. (Italics ours.)

In Appendix 2 thereto, the jointly used properties are fully described, as are the terms of the use. (R. 275–276.)

For the purpose of explaining the methods of valuation employed, the order made reference to and incorporated therein that portion of the Commission's decision in its first valuation case, *Texas Midland Railroad,* 75 I. C. C. 1, 108–182 (R. 127),

designated as Appendix 3, wherein such methods were determined and stated. The parts of that Appendix 3 relating to trackage rights, together with appropriate excerpts from the opinion, appear in the record as Exhibit 2 to the New Haven's petition. (R. 388–396.)

The proceedings in the Supreme Court of the District.—The New Haven, alleging that its rights constitute estates in the terminal properties, that the Commission is without authority to limit its findings to a value for rate-making purposes, and that the Commission's refusal to value the rights disregards a mandatory duty under Sec. 19a, sought a writ of mandamus from the Supreme Court of the District of Columbia. (R. 1–24.)

The Commission's answer (R. 404–423) set out that it had fully considered the New Haven's contention and decided adversely thereto; that it had fully complied with the statute in valuing all of the physical property mentioned in the petition to the owning carriers, and in making appropriate reference to the "rights" in the report of the owning carrier as well as in the report of the joint user under its rules and methods; that the Act contained no specific instructions as to the valuation of property permissively used under trackage rights; that it had to exercise discretion to interpret the Act; and that it interprets the Act as not requiring the specific valuation of such rights, alleged to be merely licenses dependent upon rental,

as shown by the New Haven's sworn reports (cf. Exs. 17–20, R. 631–636) to the Commission (R. 405–419).

The answer also alleged the failure of the New Haven's petition to state a cause of action for mandamus, reciting that said petition sought to use mandamus to annul the final valuation and reverse the decision and to direct the Commission to exercise its discretion in a particular way to interpret the Act so as to apportion to the New Haven part of the value found for the property of third parties not parties to the case by recognizing the New Haven's alleged title in the property. (R. 420–422.)

The case was submitted in that Court upon the petition, the rule to show cause, the answer and further pleadings, and upon oral and documentary evidence offered at the trial which occurred on February 12, 1931.

The opinion of the Supreme Court.—The Court, in a memorandum opinion by Chief Justice Alfred A. Wheat, filed April 2, 1931, refused the writ (not reported but included in record, pp. 434–449).

This opinion held that the Commission's method of valuation, adopted in the *Texas Midland Railroad case* and steadfastly followed in more than a thousand valuations since reported, was so reasonable and so consistent with the purposes of the Act that any other would lead to unjust and unreasonable results (R. 442); that the New Haven's rights were not those of an owner but merely

trackage or terminal rights under *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co.*, 163 U. S. 564 (R. 445, 447); and that "the Commission did not err in declining to value the rights of the relator" (R. 449).

The opinion of the Court of Appeals.—Upon appeal to the Court of Appeals of the District of Columbia, the judgment was reversed by judgment entered by concurrence of four justices, one not sitting, on January 18, 1932 (60 App. D. C. 403; 55 Fed. (2d) 1028). The accompanying opinion by Mr. Justice Van Orsdel held, among other things, that the case of *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co., supra,* relied upon by the Supreme Court of the District of Columbia, had little or no bearing on the issues herein presented because the contract there "granted merely trackage rights" (R. 647); that the New Haven *owns* and uses a perpetual easement which coupled with a franchise constitutes a dominant servitude in the New York terminal approaches (R. 643); that it *owns* and uses *a base fee* in the undivided half of the Grand Central Terminal (R. 646); that the Boston Terminal Company is little more than a holding company and that the New Haven is one of the "real owners" of the Boston property (R. 648); that the value directed to be found by Sec. 19a is not limited to a value for rate-making purposes, which is stated to be only one of a number of objects for which the Commission's valuations are to be *prima facie* evidence (R. 651); that the Valua-

tion Act directly and expressly requires the valuation of all property whether physical or incorporeal, including the "joint use of property owned by other carriers" (R. 651); that the Commission's failure to comply therewith is not an exercise of discretion but a refusal to act (R. 654); that this case is distinguishable from its prior holding in *United States ex. rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission,* 6 Fed. (2d) 692 (R. 652); and that under the decision of this Court in *Kansas City So. Ry.* v. *Int. Com. Comm.,* 252 U. S. 178, mandamus will lie to compel the Commission to assume jurisdiction of the specific duty of valuing these "specific well-defined portions of the road which they refused to value" (R. 653–654).

QUESTIONS

The petition for the writ of certiorari which was granted by this Court presents the following questions:

> 1. Whether Sec. 19a of the Interstate Commerce Act so explicitly requires the Commission to ascertain and report a specific value for all incorporeal property, including trackage rights in property owned and used by other carriers, that the Commission is without discretion in the matter and may be compelled by mandamus to specifically value such use of property?
>
> 2. Whether in its report of its valuation investigation under the Act, the Commission

may limit its specific findings of a single-sum value to a value for rate-making purposes?

3. Whether in an action for mandamus the courts of the District of Columbia can review the Commission's classification of a carrier's rights as important trackage rights and determine that they constitute estates in the physical properties of other carriers not parties to the action?

4. Whether the New Haven's rights to participate in the use of tracks and terminals belonging to and operated by other carriers, upon payment of a compensation for the use enjoyed, constitute estates in the property and not ordinary trackage rights?

SUMMARY OF ARGUMENT

I

The statutory direction in Sec. 19a of the Act for the valuation of "all the property owned or used by every common carrier" is general, does not prescribe the method to be pursued in valuing property permissively used under trackage rights, and requires interpretation in the light of the purpose of the legislatiton as a whole. The Commission's interpretation of the term as not requiring the separate and specific valuation of trackage rights in property owned and used by another carrier, and its practice of reporting such property in the inventory of the owning carrier, with a statement of the terms and extent of the use in the re-

port of the carrier holding such rights, is reasonable and in accord with the purposes of the legislation, and, in the absence of positive directions to the contrary, was within the discretion of the Commission to make. This administrative interpretation long and consistently adhered to is entitled to weight. Congress, with knowledge of the Commission's interpretation, having amended the Act without directing the alteration of the practice and having subsequently in Sec. 15a required the use for rate-making purposes of the valuations so made, has impliedly approved this administrative interpretation and practice.

II

The Act contains no positive instruction as to the purpose of the valuation to be made, and the Commission acted within a proper authority in stating its final single-sum values to be for rate-making purposes. At the enactment of the Valuation Act the primary function of the Commission was the regulation of rates, and a valuation for rate-making purposes met all the requirements and fell within the evident purposes of the legislation. The subsequent enactment by Congress of Sec. 15a requiring the use of 19a values for rate-making and recapture purposes is equivalent to a declaration of legislative intention that the values to be made under Sec. 19a should be for rate-making purposes.

III

The Commission did not refuse to take jurisdiction, but, on the contrary, fully performed its duty. It valued all the property comprising the terminals to the New York Central System (including the Harlem) and the Boston Terminal Company. It heard the precise issue of the New Haven's alleged joint estate in the physical properties of these other carriers, and fully decided in the New Haven valuation that the New Haven had no joint ownership. It therefore classified the New Haven's "rights of use" under "jointly used property" as "important trackage rights." The Court of Appeals, in holding in this action that the New Haven is the owner of estates in the terminal properties of the New York Central System and the Boston Terminal Company, has used mandamus not only to decide a question of title to property involving the rights of these owning carriers, not parties to the action, but also to reverse the said three valuation decisions of the Commission.

IV

The language of the several grants to the New Haven conveys to the New Haven no ownership in the physical properties permissively used in common with the owners. The grants are solely of a *permission* to use upon payment of a rental which varies according to the extent of the New Haven's actual exercise of the permission granted. Under

the decision of this Court in *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co., supra,* the grants are of trackage rights and alien neither property nor its possession. The language of an Act of the New York legislature sanctioning the contract of transportation granted only a permissive franchise to operate pursuant to such contract. The practical construction by the parties and the New Haven's own sworn reports to the Commission harmonize with the grant of mere permissive rights and are in conflict with the construction placed on the grants by the Court of Appeals. The Supreme Court of the District was, therefore, correct in holding that the owning carriers did not part with any ownership in, or possession of, their properties, and the Court of Appeals, in holding that the grants are of an undivided ownership in the properties, has read into the grants, by construction, conveyances not intended by the parties.

ARGUMENT

I

The Act does not explicitly require the Commission to ascertain and report a specific value for all incorporeal property, including trackage rights in property owned and used by other carriers

The issue in an action for mandamus to require the Commission to perform a statutory duty "is confined to a consideration of the face of the statute and the nonaction of the Commission in a matter

purely ministerial." *Kansas City So. Ry.* v. *Int. Com. Comm., supra,* 187.

Sec. 19a provides:

> (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. * * * The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

In subsection (b) it is provided:

> * * * said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, * * *. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

In its valuation, pursuant to the above statute, of the property of the New Haven as of June 30, 1915 (I. C. C. Val. Rep., Vol. 30, 1, R. 24–388), the Commission after a full hearing found that the New Haven by virtue of its rights to operate its trains into the New York and Boston terminals acquired no joint ownership in the property comprising the same (R. 64, 66–67).

In its order, it classified the New Haven's rights as "important trackage rights" (R. 76), and, in accordance with its usual practice, it stated in its report the extent of the use made of the trackage and terminals by the New Haven and the basis and the amount of the rentals paid therefor (R. 275–276). In its report of the value of the New York Central, it has inventoried and valued as owned by the Harlem, leased to and used by the Central, all the property comprising the Grand Central Terminal and its approaches, and therein makes reference to the "trackage rights" of the New Haven and the rentals received therefor. (I. C. C. Val. Rep., Vol. 27, 1, 303, 304, 309.)

Likewise, the entire physical property composing the Boston Terminal is inventoried and valued to the Boston Terminal Company as the owning and using company, the "trackage rights" of the New Haven therein being shown and referred to in a similar manner. (103 I. C. C. 707, 730.) In stating its final single-sum value of the New Haven, it recites (R. 73):

> We have given careful consideration to all facts of record pertaining to the value of the common-carrier property of the carrier as an organized, developed, well-maintained, and seasoned property in operation as a going concern.

But it declined to find a specific sum as the value of the New Haven "trackage rights," saying (R. 64):

> In our finding of value of the property owned or used in common-carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks.

The question presented is whether the Commission by its failure to assign any specific value to the New Haven's trackage rights in the New York and Boston property has violated any positive requirement of the statute.

The requirements of the Act.—This Court in *Wilbur* v. *United States*, 281 U. S. 206, 218, has said that before mandamus will lie to compel an administrative body to perform a duty, that duty must be "so plainly prescribed as to be free from doubt and equivalent to a positive command * * *." And it has further said (p. 219):

> But where the duty is not thus plainly prescribed but depends upon a statute or statutes the construction or application of which is not free from doubt, it is regarded as involving the character of judgment or discre-

tion which cannot be controlled by mandamus.

The intent of Congress in respect to the property to be valued is not necessarily to be derived by reference solely to the words "all the property owned or used," but reference may be had to the Act as a whole and to the design and purpose thereof. As said by this Court in *Ozawa* v. *United States*, 260 U. S. 178, 194:

> It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, *sacrificing, if necessary, the literal meaning in order that the purpose may not fail.* See *Holy Trinity Church* v. *United States*, 143 U. S. 457; *Heydenfeldt* v. *Daney Gold Mining Co.*, 93 U. S. 634, 638. (Italics ours.)

The Court of Appeals has declared that the Act must be construed as requiring the specific valuation of "all the property" in the broad sense of that term, including all incorporeal property. (R. 651, 653.) This conclusion necessarily leads to results so unreasonable that it is hardly conceivable that Congress so intended.

Most carriers possess contract rights to make some use of items of property operated by other carriers varying from such minor items as track connections, signal installations, and small pieces of track up to whole sections of railroads. The use may vary from an occasional and incidental use of the property to a regular and consistent one, and even where the use is regular it generally varies in extent from day to day.

In addition, most carriers possess many other valuable contract rights incident to their operations, examples of which are contracts for the purchase of materials and supplies, for the services of professional experts, for advertising space, and agreements to carry property for specified charges.

All these incorporeal rights constitute property within the broadest meaning of that term.

The unreasonable result consequent upon the adoption of such interpretation is further emphasized when we consider that if the New Haven's right to use the property held by the Central must be valued to the New Haven, likewise the New York Central's contract right to receive payment for the New Haven's use constitutes property which must be valued to the Central. If other carriers should be admitted to the use of the property, under similar terms, their contract rights likewise would have to be valued and the value of the physical property in common-carrier service by such means could be indefinitely increased by contracts among carriers for the use of the same.

Under such construction of the Act, two carriers whose physical properties have been once fully valued could, by the device of entering into contracts for the use of each other's property, thereby create additional specific property which must receive further valuation. Such contract arrangements undoubtedly create new rights and obligations between the contracting parties which may influence the earning power and successful operation of the carriers involved and may require consideration in the statement of a single-sum judgment value of a carrier as a going concern. They do not, however, require additional investment and add no specific *property* which is devoted to public use.

The contention that rights of use in property must under the Act be valued specifically and separately from the physical property in which such rights exist was advanced early in the valuation work and the Commission in denying the contention gave the following as its reasons (*Texas Midland Railroad, supra,* pp. 23–24, R. 395–396):

> It is a sufficient answer to this contention to state it is now universally accepted that it is the fair value of the property used by the public-service corporation in serving the public which is to govern in fixing rates. *San Diego Land Co.* v. *National City,* 174 U. S. 739. This being true, the value of that property can not be increased or diminished by contracts or other arrangements between the carriers themselves. In the absence of

> an improper payment as rental the public is not concerned with the acts of carriers between themselves. *The law requires the ascertainment of values for property owned or used, but not the value of the use.*
>
> The attempt to fix the value of use would be speculative, because of the absence of any sound basis upon which to proceed, and if obtained would result in the inflation of the property values of the carriers upon which the public may be required to pay a fair return. Indeed, such a finding by us would have the effect of inviting the carriers to make arrangements between themselves with the view of increasing the value of their property. (Italics ours.)

An interpretation of the Act as requiring the Commission to specifically determine the value of every incorporeal right incident to a carrier's operations as "property owned or used" would unquestionably engage the Commission in a useless and endless pursuit of values, which, if determined, would be so speculative, elusive, and shifting as to serve no helpful purpose contemplated in the Act. Such an intention, unless required by the most positive and specific language, should not be attributed to Congress.

That the term "property owned or used" is susceptible of and requires interpretation is in effect admitted by the New Haven itself, for it states that it is not using the term as including contracts and individual rights in the "constitutional" sense. (Brief in Opposition to Petition for Certiorari,

pp. 20–21.) It contended before the Commission and the lower courts that its rights were such as to constitute it the joint owner of an undivided interest in the terminal properties and that it has physical and not incorporeal property which the Commission has failed to value. The Court of Appeals, however, has based its decision largely upon the ground that the Act requires the valuation of all incorporeal property (R. 653) and applies to the New Haven's rights of use, however such rights best may be defined (R. 650–651). This holding, with all deference, we believe to constitute the fundamental error of that court.

The Act requires valuation of physical property.—For some years prior to the enactment in 1913 of the Valuation Act, the Interstate Commerce Commission had repeatedly recommended that provision be made by Congress for a physical valuation of railway property. (Annual Reports, 1907, p. 149; 1908, pp. 83, 96; 1909, p. 6; 1912, p. 70.)

The hearings before the congressional committees on Interstate Commerce of the Senate and House considering the Valuation Act indicate that the proposed legislation concerned the "physical valuation" of railroad properties. They are entitled "Physical Valuation of Property of Common Carriers," Senate Library Vol. 15, No. 6, and "Physical Valuation of Railroad Property," Senate Library Vol. 36, No. 4. (R. 442.)

The Act itself after directing that the Commission "shall, as hereinafter provided, investigate,

ascertain, and report the value of all the property owned or used by every common carrier" directs the Commission to "make an inventory which shall list the property of every common carrier * * * in detail," and to "classify the physical property" in conformity with the Commission's classification of expenditures for road and equipment. It further directs the Commission in subparagraph (b) to "report in detail as to each piece of property, * * * the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, * * *." All of this language clearly indicates that the Commission is to inventory the physical property. None of it explicitly states that all incorporeal property is to be inventoried and valued.

The Court of Appeals concludes that the direction in the Act at one place to "make an inventory which shall list the property * * * in detail" and at another to "classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment" indicates a clear intention to distinguish between physical and nonphysical property and to require that all nonphysical property is to be inventoried and specifically valued. This conclusion is not necessarily or reasonably to be drawn.

The direction to "make an inventory which shall list the property," is followed by the further direction to "show the value thereof *as hereinafter*

provided." In paragraph (b) it is then provided that "as to *each piece of property,* other than land," there shall be reported in detail "the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation * * *." It is clear that these "cost values" are to be determined for all the property included in the detailed inventory, and obviously Congress did not intend to require a report of the cost of reproduction of, or depreciation in, intangible property.

The reason for directing that only the physical property be classified in accordance with the classification of "expenditures for road and equipment" is that there are included in "original cost" and "cost of reproduction new" many expenditures which are not attributable to any particular items of physical property. These include, among others, engineering costs, organization and incorporation expenses, law expenses, stationery and printing, and interest during construction. An inventory of the property for purposes of stating original cost or cost of reproduction new would be incomplete which did not provide somewhere for these necessary costs. In the accounting classification a separate "account" is provided for each of these items. The Act, however, expressly authorizes the Commission to depart from the classification in reporting these costs, and it has become the common practice both by the Commission and carriers in making their inventories to

lump most of the items and show them as a percentage figure of the cost of the physical property, without attempting to determine the precise amount which should be recorded under each of the various accounts provided in the classification.

Subsection (b), after specifically requiring a report on original cost to date, cost of reproduction new, and cost of reproduction less depreciation, referred to in the section as the three "cost values," provides as follows:

> The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any difference between any such value and each of the foregoing cost values.

Nothing in this language directs that every incorporeal right of a common carrier is to be separately and specifically valued. The language is a recognition that having obtained the three so-called "cost values," the physical property of the carrier, because of other elements of value which inhere in it, may have a different value from that derived solely by consideration of the three cost values; but it is still only another value *of the property* that is to be found.

Congress carefully refrained from specifying any other value or element of value that must be found by the Commission or from asserting that

any other value existed, but expressly left it open to the Commission to report a value of the physical property of the common carrier different from either of the three cost values and inclusive of any element of value which the Commission should find reposed in the physical property.

From this wording of the Act it is evident that Congress had in mind the decision in *Smyth* v. *Ames,* 169 U. S. 466, 547, wherein this Court, after enumerating certain elements of value to be considered in arriving at a value for rate-making purposes, carefully stated:

> We do not say that there may not be other matters to be regarded in estimating the value of the property.

In conforming its legislation to the law of the land as thus stated, Congress authorized the reporting of any other factors which might affect value, but it did not require the ascertainment of the value of every incorporeal right.

A carrier's contract rights to run its trains into the terminals of other carriers, its traffic arrangements with its connecting carriers, and its various other contractual rights incident to its operations may go to make a carrier a successful operating concern and may justify a statement of a value different from either of the "three cost values." The Commission has recognized this in its decisions in respect to "Going Value" as shown by its decision in *San Pedro, Los Angeles & Salt Lake R. R. Co.,* 75 I. C. C. 463, on page 512, where it stated:

> All of the values of an intangible nature which inhere in the property of the carrier as a going concern successfully operating a railroad and which we can ascertain and measure, and to which we can ascribe a money value we have ascertained and reported. To the extent that we have found or the courts have said that there is a value or an element of value in any intangible right, privilege, or advantage which the carrier asserts that it enjoys, we have endeavored to give weight thereto, even though we could not assign a separate, definite money value to it.

But such rights do not constitute physical property and are not required under the plain language of the Act or by a reasonable interpretation thereof to be "inventoried" and the value thereof specifically determined.

The requirements of paragraph (b) Second, for the reporting of "the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier" and "the present value of the same" have likewise been fully performed. Nothing in this language expressly requires the separate valuation of an incorporeal right to operate over the tracks or into the terminals on lands or rights of way of another carrier.

It is true that the term "right of way" is sometimes used to describe the intangible right to cross the land of another, but the more ordinary and accepted use in railroad parlance is to describe the

strip of land which railroads take upon which to construct their roadbeds. (54 C. J. 824.)

This Court in holding that the grant of a "right of way" conveyed more than the intangible right of crossing and covered the rights to take possession of land for the purpose of establishing tracks thereon said (*Georgia* v. *Cincinnati So. Ry.*, 248 U. S. 26, 28):

> A grant of the use of a right of way is the grant of a right of way in the ordinary meaning of words * * *.

The "right of way" which the Commission is required here to value is the strip of land occupied by the Central's tracks and not the intangible right to run trains over those tracks held by the New Haven.

Commission's method of valuation of property permissively used under trackage rights reasonable and meets the requirements of the Act.—That the provision of the Act directing the valuation of "all the property owned or used" required administrative interpretation before the Act could be enforced is best evidenced by a recital of conflicting claims which were adduced at the very commencement of the valuation work as to the proper treatment to be accorded property owned and operated by one carrier but used under trackage rights by another.

Some carriers contended that they "used" the property over which their trains ran, and that the Act was mandatory in requiring the valuation of such property to them. Others contended that the right of use in such tracks was "property" owned

and used and should be valued over and above the physical property. On the contrary, the owning carriers contended that since they both owned and used their own property, and that a part of such use was to permit other carriers to run trains thereover upon payment of rental, the entire property should be valued to them as the owners and users thereof.

Likewise, operating carriers owning equipment used in accordance with common railroad practice by many other carriers contended that this letting of their equipment on a per diem rental was only a part of their use of their own equipment, and that consequently, the same should be valued wholly to them as "owned and used."

The Commission found there were in existence many thousands of instances of "joint facilities" which are facilities of many kinds, owned, maintained, and operated by a particular carrier, but the use of which is shared by one or more carriers under contracts giving them restricted rights in the use thereof generally upon the payment of a rental in proportion to the use made. A terminal, such as the Boston Terminal, operated and maintained by the owning company, collecting from the carriers which enter it with their trains rentals in proportion to the use made thereof, represents a typical instance of a "joint facility."

It was essential that the Commission in the commencement of its valuation work determine by whom the "property" in such instances was

"owned" and by whom it was "used" within the meaning of the Act. Turning to the Act for guidance, it found the general requirement to value "all the property owned or used" by every common carrier, but it looked in vain for specific, positive instructions as to the method to be pursued in inventorying and classifying such property. Discussing the problems in an appendix to its first valuation decision, wherein it announced its rules and methods which should be observed in all valuation cases, it said (*Texas Midland Railroad, supra,* pp. 122, 123):

> Ordinarily carrier property is inventoried in the name of the owner; that is, the details are shown in the inventory of the owner and not elsewhere. In case of jointly owned property the details would appear in the inventory of each owner.
>
> Where property is owned by one carrier and exclusively used by another carrier the details would appear in the inventory of the owner, but the total amount would be shown in the inventory of the user as property used by that carrier. (R. 388.)
>
> * * * * *
>
> It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use. (R. 389.)

In the absence of what is deemed to be any specific direction in the Act for the treatment to be accorded to property subject to "trackage rights," it announced a method which it thought to be reasonable and to meet the requirements of the Act as to the valuation of "all the property" (p. 21, R. 392):

> Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common-carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The extent and terms of the use appear also in the inventory of the using carrier or carriers.
>
> It has been our endeavor to adopt a method with respect to this class of property which will permit of reporting the three cost values for all property used for common-carrier purposes without duplication. When it is borne in mind that many railroads are not operated exclusively by their owners, but that certain portions thereof are used by one or more carriers by virtue of trackage rights, etc., it is apparent that duplication of values for such jointly used property will result unless a proper course of procedure is pursued. The necessity of securing reproduction new and reproduction less depreciation values without duplication is manifest, since these values must necessarily be considered as factors entering into the determination of an ultimate value of railroad property.

As a further explanation of its method and its reasons therefor, the Commission, in the body of its report in the *Texas Midland Case* (p. 24, R. 396), said:

> When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress, and the public will be informed with respect to every piece of property used in serving the public, with the single exception of that insignificant portion which is privately owned and partially used by common carriers. The inventories of the individual carriers will contain the cost values in detail with respect to property owned; the cost values in detail for property exclusively used by them but owned by a non-carrier; total cost values for property exclusively used by them but owned by a common carrier; a description of the terms and use of jointly used property of others with a reference to the report of the owning carrier for details in regard thereto; and a description of the terms and use of jointly used property owned by them with a reference to the reports of the using carrier or carriers for details in regard thereto. All the property used in serving the public will be inventoried and valued, and will be inventoried and valued once and only once. There will be and should be no duplications.

After a careful consideration of the problems in the light of the statutory requirements and pur-

poses, the Commission announced these rules, methods, and principles to be followed with respect to the valuation of property subject to trackage rights, and concluded (R. 390), "It is believed that the method adopted fully complies with the statute."

The foregoing explanation is set out at some length in order to show that the Commission has not disregarded the statute, but seeking to enforce it, and looking in vain for specific directions to guide it in the valuation of property subject to trackage rights, and finding it necessary to interpret and administer the Act, adopted and announced a principle of valuation in respect to such property which it deemed to be in harmony with the purposes of the Act and in accordance with the intention of Congress and which it found to reach a reasonable and proper result.

The New Haven has apparently recognized the inconsistency of asking for a specific valuation of the right of use over and above the value of the physical property and does not seek to have the Act construed as requiring this. It has not contended that its rights constitute an intangible element of value which the Commission has failed to report. It concedes that the Commission has valued "all the property" comprising the terminals (R. 425, 429), but it asserts that it is a joint owner of the physical properties and that an undivided portion thereof representing its "ownership" and

measured by its proportionate use of the property on valuation date should be inventoried and specifically valued to it (R. 10, 22–23).

The Commission upon the evidence submitted to it decided that the New Haven had no joint ownership, and the merits of this question are hereinafter considered. For present purposes it is only desired to emphasize the wholly unreasonable result of interpreting the Act to require an apportionment to holders of trackage rights of the physical property over which they operate.

The New Haven incurred no "original cost" in connection with the construction of the property, has no investment therein and would not, upon any reasonable theory of reproduction, have to reproduce it. It has not nor can it issue securities covering the physical property. The extent of its use varies from day to day, and it pays rental only to the extent that it cares to and does make use of the property. Its "undivided interest" if measured by the extent of its use would be a constantly varying joint ownership. Its rental payments, as hereinafter shown, are by mandatory provisions of law charged as in the nature of operating expenses.

A carrier is unquestionably entitled to earn from rates an amount sufficient to pay all operating expenses and in addition a fair return on the value of its property if it can do so without exacting unreasonable rates; but to allow it to receive a return on the value of property provided by another and, at the same time, require it to charge to operating

expenses rentals for the use of that property, results in the public paying and such carrier receiving a double return on that "property." This would reward with a double return on property the carrier which uses the property of others under trackage rights and by comparison penalize with a single return the carrier which acquires the use of property through investment in the ownership thereof.

By the proposed treatment, the Central (including the Harlem), which paid the entire cost of the New York property, issued the original securities therefor and must pay interest thereon, would as of valuation date be deprived of portions of the property for security-issuing purposes, varying from 24 per cent for certain sections to 62.95 per cent for others. (R. 60–61.)

The Boston terminal, likewise, which has constructed and operates a terminal and has issued securities for the construction thereof, all in accordance with the authority contained in its charter, would have its entire value apportioned to the several carriers entering it and would itself be wholly without value for the purpose of issuing securities.

To assign to the New Haven in its valuation a substantial portion of the physical property over which it operates for the payment of a toll would be improper, we submit, whether that value be one for rate-making, security-issuing, or purchase and sale purposes. The intention to positively require

the Commission to so treat it for valuation purposes should not be attributed to Congress in the absence of the most specific language requiring it.

Legislative approval in Sec. 15a of the Commission's valuation of property subject to trackage rights.—In the Transportation Act of 1920 there was included what is now known as Sec. 15a of the Interstate Commerce Act, by which Congress directs the Commission to establish rates so that carriers may earn a *net railway operating income* equal as nearly as may be to a *fair return* on the aggregate value of their railway property. Values found under Sec. 19a, it is declared, "shall be deemed by the Commission to be" the values to be used for determining such aggregate value. In subparagraph (1) Congress defined the term *"net railway operating income"* to mean *"railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents."* The terms "railway operating income" and "joint facility rents" had well-known and accepted meanings. Under the accounting classifications made pursuant to statutory authority, prevailing for many years, "joint facility rents" are defined as follows:

> This account shall include amounts payable accrued as rent for tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies, or individuals, and in the joint use of which the accounting company participates.

Under this accepted definition rentals paid by the New Haven for the use of the New York and Boston terminal properties by the mandatory provisions of Sec. 15a are required to be and have been charged by it as "joint-facility rents" and are deducted from revenues in the same manner as operating expenses in determining net railway-operating income. This results from a positive requirement of the statute, not of the Commission.

The effect of the definition of net railway-operating income in Sec. 15a is to declare that in determining the fair returns for rate-making and recapture purposes, rentals paid for joint facilities shall be considered an operating expense and along with other operating expenses be deducted from gross income before determining whether the net income received by a carrier represents a fair return on the value of its property.

From the foregoing it is evident that in enacting Sec. 15a Congress knew of the Commission's decision not to include in the 19a valuation of a carrier any part of the physical property used by it under a joint facility rental arrangement and approved of this treatment. It recognized the practical difficulty of attempting to apportion to users of equipment and joint facilities a portion of the value of such property measured by the extent of use, which constantly varied. Accordingly in directing the use of 19a values for rate-making purposes it enacted an accounting regulation designed

to harmonize the fair net returns which it proposed to allow carriers with the Commission's valuation methods by requiring joint-facility rents paid to be an operating expense. By this method it provided in a more appropriate place a means for carriers to obtain a full return on the property over which they operated under such arrangements. Thus, under the Commission's valuation methods, together with the congressional definition of "net railway operating income," the New Haven is permitted to earn enough to pay all operating expenses, *including rental for the Boston and New York properties,* and in addition a return equal to 6 per cent upon the value of other property which it operates for railroad purposes. If the Commission should be required to include in the New Haven's value a portion of the value of the terminal property, a clear duplication of return in favor of the New Haven would result, in that the same items of property would both add to its aggregate value and at the same time decrease the amount of its net railway operating income by the amount of the rental paid for its joint use.

In respect to the Central, the amount of rent received by it from the New Haven, by legislative mandate, is added to and included as a part of its "net railway operating income," and unless this income is permitted to reach 6 per cent upon the entire value of the New York terminal properties, the Central is denied a fair return on all its property. Under the method adopted by the Commission and

approved, and adapted by Congress to its plan for rate-making purposes, there is no duplication to the owning carrier, to the jointly using licensee, or to the public.

The distinction between property held under lease and under trackage rights is not an artificial one made by the Commission for accounting convenience but has full legal recognition. (Elliott on Railroads, 3rd Ed. Vol. I, § 514, p. 748.)

In *Roosa* v. *Brooklyn Heights R. R. Co.*, 28 Misc. 387, 388, the Supreme Court of New York said:

> In the one contract, that for the use, we have the parties thereto using in common the road or the part thereof embraced therein, the parties operating their cars respectively over the same, the possession, however, remaining in the owner, while in the other, the lease, the lessee has, subject only to the limitations, restrictions and conditions therein contained, the absolute and exclusive use, enjoyment and possession of the demised property, operating the road of the lessor corporation in the same manner that the owner would but for such lease, and that is the case here.

The Commission values *leased* property to the using carrier. The rentals paid for property held under lease are not treated as an operating expense in the Commission's accounting regulations and Congress did not require such treatment in Sec. 15a. Only in instances such as joint facilities used under trackage rights, and equipment interchanged

among several using carriers, where it is impracticable to apportion the value among the several "users," did Congress require the rentals to be charged to operating expenses. This confirms the conclusion that Congress approved the Commission's valuation methods.

In the case of the Boston terminal property it is significant that in the legislative enactment providing the arrangement by which that property was to be constructed and operated it was also expressly provided that the rentals paid by the using company should be charged by it to operating expenses.

Discretion expressly conferred to prescribe form of valuation report.—After being directed to value "all the property owned or used by every common carrier," the Commission is expressly given broad authority in respect to the methods to be adopted and the form in which the value of "all the property" shall be submitted. Sec. 19a provides:

> (e) * * * all rules and regulations made by the Commission for the purpose of administering * * * this section * * * shall have the full force and effect of law.

And in subsection (c) it is further provided:

> Except as herein otherwise provided, the Commission *shall have power to prescribe* * * * *the form in which the results of the valuation shall be submitted,*

> and the classification of the elements that constitute the ascertained value, * * *. (Italics ours.)

This language clearly indicates that Congress did not pretend to foresee nor attempt to specifically provide the methods to be pursued in reporting and classifying property used under every conceivable arrangement. It therefore, by express language, wisely left to the Commission the formulation of methods for the classification, reporting, and valuation of the same. The Commission having *valued all the property* is merely acting within express authority in choosing the manner in which property subject to trackage rights shall be classified and the value thereof reported to Congress.

Administrative interpretation of the Act entitled to weight.—The principles announced by the Commission for the valuation of trackage rights have been consistently followed by the Commission in all its valuation decisions up to and including the last decision reported. *Delaware L. & W. R. Co.*, I. C. C. Val. Rep., Vol. 39, 1, 19. It has completed its primary valuations, issuing more than one thousand reports which it has made and, in accordance with the requirements of law, annually reported to Congress since it decided the *Texas Midland Case*, in 1918. During that interval Congress has amended the valuation section of the Interstate Commerce Act (42 Stat. 624), and while it has made changes therein in respect to other matters it has

in no way indicated Congressional disapproval of the Commission's interpretation of the requirements of the Act in respect to valuation of property permissively used by virtue of trackage rights. It is a well-settled principle of law that an administrative interpretation of a statute which has long been adhered to is entitled to great weight in construing such act. *United States* v. *Moore,* 95 U. S. 760, 763; *Hastings and Dakota R. R. Co.* v. *Whitney,* 132 U. S. 357, 366; *Logan* v. *Davis,* 233 U. S. 613, 627.

Not only has Congress in its amendment to Sec. 19a failed to indicate any disapproval of the Commission's construction of the Act, but in enacting Sec. 15a, it directed the Commission's findings of value fixed under Sec. 19a as of the appropriate date to be used without alteration for rate making and thereby through the strongest inference *approved* of the Commission's methods and interpretation.

The applicable principle of law is well stated in *25 R. C. L.,* pp. 1043, 1045, 1046:

> The weight to be given to executive or departmental practice is increased when the legislature, in reenacting the law or another law in pari materia, fails to indicate in any way its disapproval of the settled construction of the officer or department, or where an implied approval of such construction may otherwise be deduced from subsequent legislation, or failure to alter the practice by legislation.

During this long period of consistent administrative interpretation and up to the conclusion of its task of making the primary valuations, no court has required the Commission to alter its methods of reporting the value of property used under trackage rights, although the attempt has been made in mandamus proceedings to require the Commission to do substantially, in our opinion, what the New Haven here seeks.

In *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission, supra* (June 1, 1925), the Kansas City Southern in a petition for mandamus alleged that the Commission had failed to perform the explicit ministerial duty under Sec. 19a of reporting the value of "all the property owned or used" by it. Its petition alleged that by virtue of its one-twelfth stock ownership in and its contractual right for 200 years to operate its trains into the Kansas City terminal, it was possessed of an equitable ownership therein which the Commission was required to value to it. The Court of Appeals of the District of Columbia declined to require the Commission to specifically value the carriers "right and interest in certain specified properties, to wit, the Kansas City Terminal Railway Company" (p. 693).

This Court on application for certiorari refused to review that decision. (269 U. S. 570.)

Practically all operating carriers, to greater or less extent, have rights of use in property owned and

operated by other common carriers. The principles governing the classification for valuation purposes of such property must be the same whether the property involved be of major or minor importance. The Commission's interpretation which it has consistently followed for many years, which has received the implied approval of Congress, and which the Court of Appeals in 1925 found to violate no explicit requirement of the Act, should not now be reversed at the conclusion of the primary valuation work where, as we have undertaken to show, such interpretation meets the reasonable requirements of the law and complies with the apparent legislative intent.

II

The Commission acted within a proper authority and in accordance with the intent of Congress in stating its ascertained values to be for rate-making purposes, and is under no positive command of the Act to state a different value

In its first valuation decision announced in 1918 the question arose as to whether the Act required the Commission to state a single sum as the value of the property owned or used for common-carrier purposes. (*Texas Midland Case, supra,* pp. 5–6.) In the face of conflicting contentions by the parties to the proceedings, it concluded:

> * * * While it may be questioned whether or not the Act *requires* the finding of a single sum as the value of the property, we are of the opinion that it *authorizes*

> the finding of such value for purposes under the Act to regulate commerce, and it is our purpose ultimately to make such finding as to each property. * * * (Italics ours.)

In its decision published at that time it observed that it had reported all the matters specifically required to be reported and had shown all the basic facts upon which a judgment could be formed as to the sum to be found as value for the purposes of the Act; and that it would ultimately report such judgment value in the particular case.

Prior to the announcement of a single-sum value for any carrier, the Transportation Act of 1920 was passed, making further reference to valuations under Sec. 19a and, as heretofore noted, requiring the use of values finally ascertained thereunder for rate-making and recapture purposes.

In its final valuation of *San Pedro, Los Angeles & Salt Lake R. R. Co., supra,* 504, decided June 7, 1923, the Commission noted the positive requirements in Sec. 15a of a value for rate-making purposes, as well as the other possible purposes under the Transportation Act for which values might be required, and observed that the value of the property of a common carrier could not be said to be the same for all purposes, irrespective of the use to be made of that value.

It concluded that while the Act did not in terms require the finding of a single-sum value, it authorized such finding, and that the single-sum value

which it should report is the value for rate-making purposes.

In all its subsequent decisions, including that of the New Haven, the Commission has stated the single-sum values found to be those for rate-making purposes. In respect to the New Haven's rights to participate in the use of the property held and operated by other carriers, it held that it was not required to state a specific value of such rights as a part of its value for rate-making purposes. (R. 64, 67.)

Throughout the litigation the New Haven has contended that the Commission is without authority to state a value for any particular purpose but is under a peremptory duty to state a value which should not be "any different value from the actual pecuniary or economic value which would be placed upon it in ordinary commercial transactions." (Brief Ct. of Apps., p. 48.)

In its decision, the Court of Appeals, while expressly declining to say that the Commission's single-sum value was an improper one for rate-making purposes, has held that the Act is mandatory in requiring the Commission to state a valuation other than for rate-making purposes, suitable for use "for any and all purposes specified in the Act." (R. 651.)

In *The Minnesota Rate Cases,* 230 U. S. 352, this Court clearly indicated that in testing the value of a carrier's property for rate-making purposes, the value to be used should not be based upon the

returns from rates in existence. By contrast, in a purchase case a carrier's earnings under an existing schedule of rates constitute unquestionably one of the most important elements to be considered.

In the *Missouri Rate Cases,* 230 U. S. 474, an attempt was made to use, as a basis in determining valuations for rate purposes, valuations which had been determined and used for taxation purposes. In this connection this Court, speaking through Mr. Justice Hughes, said at page 498:

> Nor was it shown that these valuations, made by them for the purposes of taxation, were upon a basis which could properly be taken in determining the fair value, where the sufficiency of prescribed rates is involved and the issue is one of confiscation.

In *Galveston Elec. Co.* v. *Galveston,* 258 U. S. 388, this Court, in distinguishing between elements to be considered in fixing different values, said, at pages 396–397:

> In determining the value of a business as between buyer and seller, the goodwill and earning power due to effective organization are often more important elements than tangible property. Where the public acquires the business, compensation must be made for these, at least under some circumstances. *Omaha* v. *Omaha Water Co.,* 218, U. S. 180, 202, 203; *National Waterworks Co.* v. *Kansas City,* 62 Fed. 853, 865. And they, like past losses, should be considered in determining whether a rate charged by a public

> utility is reasonable. Compare *Venner Co.* v. *Urbana Waterworks,* 174 Fed. 348, 352. But in determining whether a rate is confiscatory, goodwill and franchise value were excluded from the base value in *Cedar Rapids Gas Light Co.* v. *Cedar Rapids,* 223 U. S. 655, 669, and *Des Moines Gas Co.* v. *Des Moines,* 238 U. S. 153, 169; and the expressions in *Denver* v. *Denver Union Water Co.,* 246 U. S. 178, 184, 191, and in *Lincoln Gas & Electric Light Co.* v. *Lincoln,* 250 U. S. 256, 267, are not to be taken as modifying in any respect the rule there declared. Going concern value and development cost, in the sense in which the master used these terms, are not to be included in the base value for the purpose of determining whether a rate is confiscatory.

In *St. Louis & O'Fallon Railway Company et al.,* v. *United States et al.,* 279 U. S. 461, 487, this Court said:

> In the exercise of its proper function this Court has declared the law of the land concerning valuation for rate-making purposes.

The foregoing extracts indicate, we think, that the courts have recognized a distinction between the methods to be followed and the elements to be considered in fixing the value of common-carrier property for rate-making purposes on the one hand, and in valuing the property for purchase purposes on the other. The Valuation Act itself recognizes a distinction between value for rate-

making purposes and value for other purposes when it requires in paragraph "(b) Third" that the Commission show separately the property held for purposes other than those of a common carrier.

The value to be used in a rate-making case has been customarily referred to by the courts as the "fair value" or the "reasonable value."

In *Smyth* v. *Ames, supra,* 546, this Court said:

> We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public.

In *San Diego Land & Town Co.* v. *Jasper,* 189 U. S. 439, Mr. Justice Holmes said, at page 442:

> The main object of attack is the valuation of the plant. It no longer is open to dispute that under the Constitution "what the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public."

In *Spring Val. Water Works* v. *City, etc., of San Francisco,* 192 Fed. 137, 154–155, the District Judge used the following pertinent language:

> It is impossible to consider the constant use of the word "fair" or the word "reasonable," in connection with value, by all the Federal courts and the courts of this State in practically every recent statement of this

> rule, without feeling that regard must be given to the service performed by the property; that reasonable value and fair value are not always and under all conditions the precise equivalent of full actual value, or the value which would be awarded in condemnation proceedings; that the value upon which a fair return is due is the value which under all the circumstances is reasonable and fair as between the public and the person who has voluntarily devoted his property, or some portion or use thereof, to public convenience.

In the light of the clearly recognized distinction between value for rate-making purposes, and value for other purposes, and in view of the apparent impossibility of stating a single-sum value which might be used for every conceivable purpose, the Commission concluded to exercise what it thought to be its *authority* to report a value for rate-making purposes.

Sec. 19a, as hereinbefore observed, is specific in requiring the Commission to report what are designated as the three "cost values" of property, namely, original cost, cost of reproduction new, and cost of reproduction less depreciation, in requiring a statement of the "present value" of lands, and of other matters. That it contemplated that the Commission, from a consideration of these and other elements, should ascertain and state a value of the property and authorized it to do so is indicated by the language of subsection (c) wherein the Commission is given power "Except as

herein otherwise provided" to prescribe "the form in which the results of the valuation shall be submitted and the classification of the elements that constitute the ascertained value * * *."

Nowhere does it specify all the elements to be considered in this ascertained value and nowhere does it state the purpose for which the ascertained value shall be used. The naming of some of the matters to be considered in fixing the value and the failure to name others is reasonably to be attributed to the thought expressed in the following excerpt from Report No. 1290, pages 5 and 8, of the Senate Committee on Interstate Commerce, Sixty-second Congress, third session, in which Senator La Follette for the Committee explained to the Senate the purposes of different provisions of the bill which became the Valuation Act.

> Your committee recommends striking out the first five paragraphs of the House bill, which in some respects are indefinite and uncertain and deal with some matters not properly within the scope of a bill designed to provide for a valuatiton of the several classes of property of carriers subject to the act to regulate commerce. In lieu thereof the committee proposes certain amendments which it believes essential to enable the commission to secure every element of the value of the property of the common carriers, so classified and analyzed as to enable the commission and the courts to determine the fair value of such property for rate-making purposes.

> The courts from the first have used various terms descriptive of the values and elements of value to be determined as a basis for ascertaining the fair value of railway property. Some of these terms they have altogether rejected. Others have come to have an accepted meaning and significance by commissions and courts and are recognized as covering all the elements of value attaching to the property of common carriers for rate-making purposes.
>
> * * * * *
>
> Especially as to intangible values, the commissions and the courts are in a transition period. The elements of value which will finally constitute fair value for rate-making purposes are steadily narrowing. They are not expanding.

The legislation evidences the intention of Congress to require specific findings as to the three "cost values" clearly known to be necessary in ascertaining value, leaving it open to the Commission to find a value different from any of them based upon a consideration of such other elements, if any, as may be proper to be considered for rate-making purposes.

The Valuation Act in paragraph (i) provides that all final valuations by the Commission shall be "prima facie evidence of the value of the property in all proceedings" under the Act to regulate commerce as of the date of the fixing thereof, and in all "judicial proceedings for the enforcement of the Act" or brought to enjoin and set aside any order

of the Commission. At the time of the enactment of the Valuation Act, March 1, 1913, the only orders which the Commission made and the only proceedings before it in which valuation was a factor were those involving rates. A valuation for rate-making purposes, therefore, met all the requirements of the Act and fell within the evident intention of Congress in enacting the same.

This is made further evident by reference to the foregoing excerpts from the report of the Senate Committee, where the chairman specifically stated that the committee was proposing amendments which would empower the Commission to secure all the elements of value of the property of common carriers necessary to enable it to determine a fair value of such property for *rate-making purposes*.

By the Transportation Act of 1920 Congress made amendments to the Interstate Commerce Act, the most important of which were the rate-making and recapture provisions contained in Sec. 422, now known as Sec. 15a of the Act. In this section Congress again dealt with the subject of valuation and prescribed and specified a purpose for which valuations made under Sec. 19a shall be used. In paragraph (2) it provided:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or terri-

> tories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: * * *.

In paragraph (4) it is provided:

> For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land *for rate-making purposes,* and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values *for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.* (Italics ours.)

Likewise in paragraph (6), the value of individual carriers for excess-income purposes is declared to be that found under the same provision.

This positive instruction to the Commission, in the absence of completed final 19a valuations, to give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, coupled with the express declaration immediately following that once the valuations of individual carriers have been finally ascertained under Sec. 19a as of appropriate dates, such values *shall be deemed to be the values thereof* for the purpose of computing aggregate value, amounts to a legislative direction to the Commission, that its final values shall be determined in such manner and upon consideration of such elements that they may properly be used for rate-making purposes.

In its decision, the Court of Appeals has stated: "We must not be understood as holding that the valuation of the New Haven property fixed by the Commission is not a proper valuation for rate-making purposes." (R. 651.) But it held that since the valuations required by the statute were subject to use for other purposes than rate making, the value to be ascertained should not be one for rate-making purposes, and it recites other purposes under the Transportation Act for which valuations might be required.

The court has neglected to observe, we respectfully submit, that whereas valuations made under

Sec. 19a for general purposes under the Act are only *prima facie* evidence of such values and may be corrected in the proceedings if found to be inappropriate for the particular use (*United States* v. *Los Angeles R. R.*, 273 U. S. 299), in respect to rate-making and recapture under Sec. 15a, the 19a valuations fixed as of appropriate dates are positively required to be used without alteration.

It is not apparent, moreover, as appears to be assumed by the Court of Appeals, that valuations for rate-making purposes would be inappropriate evidence of the value for the other purposes under the Act, including all those mentioned by the court. So far as valuation is taken into consideration in prescribing divisions of joint rates it would seem that rate-making values would be most proper to be used.

Although not so expressly provided in the Act, valuation is undoubtedly a factor to be considered in approving the issuance of securities under Sec. 20a. A properly ascertained valuation for rate-making purposes may be a proper factor to be considered in determining the issuance of securities. It may not be the only factor so far as valuation is concerned and to the extent that it may be inappropriate for use in any case, it may be supplemented, since a valuation under Sec. 19a is only *prima facie* evidence before the Commission of the value of property for that purpose.

It is pertinent to observe, moreover, that a remarkable result is achieved in this case if, as

implied by the court, a portion of the value of the New York and Boston property must be inventoried and valued to the New Haven for security-issuance purposes. The original investment for the construction of the Grand Central Terminal was incurred wholly by the Central system and it issued bonds to provide funds therefor; upon any reasonable theory of reproduction the Central and not the New Haven would incur the cost of construction and issue the securities therefor. The New Haven can not sell or assign its trackage rights. (R. 601.) The holders of securities issued by the New Haven would have no recourse to sell either physical or nonphysical rights in the Central's property. It is not reasonable, therefore, that for security-issuance purposes a portion of the physical value of these properties should be assigned to the New Haven.

The court likewise refers to the provision in Sec. 5 of the Act, adopting a plan of consolidation of railroad properties and prescribing in paragraph (6) (b) that "The value of the properties sought to be consolidated shall be ascertained by the Commission under section 19a of this Act, * * *" and that the securities at par "shall not exceed the value of its consolidated properties as determined by the Commission." Whether these requirements strictly limit the issuance of securities under consolidations to the final single-sum values as ascertained by the Commission under Sec. 19a, without

consideration of other factors, such as ownership of noncarrier property, is highly doubtful, to say the least, and not necessarily to be decided here. Even assuming that such limitation applies, however, it must be said that Congress being annually informed as to the Commission's valuations knew that they were made for rate-making purposes and there may be many good reasons why it was thought desirable to limit securities upon consolidation of railroad properties to the values so ascertained.

The only occasion for which Congress has plainly and unequivocally provided that final values when fixed under Sec. 19a as of appropriate dates shall be used *without alteration* is in respect to rate making and recapture under Sec. 15a.

The foregoing is submitted as showing that the Commission clearly acted within its authority in stating a single-sum value for rate-making purposes, and in so doing met the purposes of the legislation which were clearly evident.

In this proceeding, however, the precise question is not whether the Commission exceeded its authority in reporting a rate-making value, but whether in the report of its valuation it has failed to perform some ministerial duty clearly commanded by the Act.

It has been shown, we think, that "all the property owned or used" within the proper meaning of those words has been valued. Those things which

are specifically required to be reported are shown in the report, as well as those facts and factors not specifically required, but which were thought to have a bearing on value. The report includes the three "cost values"; the original cost and present value of lands, rights of way, and terminals; the history and organization of the present and any previous corporations operating the property; the changes in security issues in any reorganizations; the net and gross earnings; the value of aids, gifts, or grants; the original cost and value of noncarrier property; the amount of working capital and material and supplies; the terminals used; traffic connections; economic conditions relating to traffic; the results of corporate operations; the investment in road and equipment; the investments in other companies and the status of holdings on valuation date; and many other matters. This comprehensive report is not limited in the elements and factors included to those properly to be considered in reaching a value for rate-making purposes. If in any proceeding the value required for a purpose under the Act should be such as to render the single-sum value for rate-making purposes inappropriate, the valuation, upon the basic facts found in the report, can be modified and corrected. But the Act does not contain in any specific language a command to report another or a different value.

In *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission,*

supra, the petitioners objected to the finding of a value for rate-making purposes and as stated by the court (p. 693):

> * * * prayed for a writ of mandamus, directing and requiring the Commission (a) to investigate, ascertain, and report the true, economic value of said properties; * * *.

The Court of Appeals of the District of Columbia, considering that the Act did not specifically require the statement of a value other than for rate-making purposes, declined to reqiure the Commission to alter its valuation.

That decision, we believe, was correct and is applicable in the present case.

III

In an action for Mandamus, the courts of the District of Columbia may not review the Commission's classification of the New Haven's rights as "important trackage rights" and determine that such rights constitute "estates" in the physical properties of other carriers not parties to the action

It has been shown that "the face of the statute" requires the ascertainment of values for "property owned or used by every common carrier" but not the value of the *use* and that, under the Commission's reasonable interpretation of the statutory purposes, property *jointly used* under arrangements not amounting to a *joint ownership* of the property itself should be inventoried and valued to the owning carrier with appropriate notation con-

cerning the joint use in the valuation of both carriers.

The New Haven concedes that the terminal properties have been fully valued. (R. 425, 429.) The "nonaction of the Commission" against which the writ is sought is the Commission's alleged failure to find that the New Haven has a joint ownership in the properties in question. (Brief in Opposition to Petition for Certiorari, pp. 18, 19, 20–21.) The petition seeks to have the determined value of these terminal properties "properly apportioned" (R. 10), alleging "an estate in perpetuity, the legal equivalent of an estate in fee simple, in the tracks * * * from Woodlawn to Forty-third Street and in the Grand Central Terminal" and "a perpetual franchise" to use the Harlem's tracks and the Boston Terminal property (R. 22).

The precise issue of a joint ownership fully decided by the Commission.—Pursuant to the provisions of Sec. 19a (h) and (i), the Commission accorded to the New Haven a full hearing. Thereafter it published its final valuation of the New Haven's property as of June 30, 1915, in a report and order dated November 13, 1929. (Ex. 1 to the petition, R. 24–388.) The order recited that the New Haven had no property "jointly owned and used, except minor facilities," and classified the New Haven's "rights of use" under "*Jointly used property*" as "important trackage rights." (R. 76.) In Appendix 2, referred to in the order, the

New Haven's rights were fully described, as were the terms of its joint use. (R. 275, 276.)

In its opinion the Commission discussed the New Haven's contentions, analyzed the evidence, and determined that such rights did not constitute any *joint ownership* in the physical properties to be classified and valued under the Act. (R. 60–67.)

In respect of the New Haven's right to use the Harlem's tracks, the Commission stated (R. 63–64):

> It argues that this is not an ordinary trackage right but an estate in the property.
>
> * * * * *
>
> There is nothing expressly stated in the agreement which gives to the carrier or its predecessor a *part ownership* in the property, nor is there any expression which may reasonably be construed as giving to the carrier an interest beyond that right to use on consideration of the payment of a full compensation. On the contrary, as set out above, it is expressly stated that the agreement is a *contract of transportation* wherein full compensation is paid for the right to use the property jointly with the owning carrier. * * * (Italics ours.)

And in respect of the New Haven's right to use the Grand Central Terminal the Commission said (R. 65–66):

> The carrier contends that it is the owner and user of an undivided interest in the

> Grand Central Terminal property, Fifty-ninth Street to Forty-second Street.
>
> * * * * *
>
> There is no provision by which the carrier can acquire an *interest in the fee* or an indefeasible title to any or all of the property other than that of a cotenant or joint user as defined by the agreement. The carrier does not own an interest that would cause it to suffer loss by deflation or to profit by the enhancement of value which might take from or add to the intrinsic worth of the property used. (Italics ours.)

Concerning the carrier's contentions in respect of the Boston Terminal, the Commission notes that this terminal is "owned and used by The Boston Terminal Company" and sustained the omission of a value for the New Haven's use as in accord with previous decisions and its finding with respect to the Grand Central Terminal. (R. 67.)

The Commission is neither constituted nor organized to adjudicate and define with all the precision and nicety of description required by the common law the exact nature of the rights or interest held by carriers in the properties of other carriers over which they operate. It is not its function to try intricate questions of title to property as between carriers. Its duty under Sec. 19a is primarily to value all the property of all the carriers and properly classify it for valuation purposes.

The Commission fully performed its duty in respect of the properties in question when it once

fully valued all the properties and fully determined from the evidence before it that the New Haven's "rights of use" were "important trackage rights" (R. 76) and did not amount to *joint ownership* in the properties owned and used by other carriers (R. 64, 66, 76). Considering that it had fully valued all property under the Act the Commission, therefore, said of the New Haven's right to operate over the Harlem's tracks (R. 64–65):

> * * * we are of the opinion that no specific sum should be found for the carrier's *right* to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is *best* defined by reference to it as a license to use, an easement, or a trackage right. * * * it is distinguished only by its magnitude from the many other *similar rights of carriers to the joint use of property wholly owned by other carriers.* (Italics ours.)

Since it found that the New Haven's rights of use did not constitute any joint ownership in the properties themselves, the Commission followed the method of valuation established in *Texas Midland Railroad, supra,* and in its valuation as of June 30, 1917, of the New York Central system (including the Central's controlled lessor, the Harlem) inventoried and valued therein all of the Grand Central Terminal and its approaches. (R. 425, 429.) In this report the New Haven's terminal or track-

age rights are referred to as appears in the margin hereof.[1] (I. C. C. Val. Rep. vol. 27, 1, 303–304.)

[1] *Solely leased, but jointly used*

Owned by the New York and Harlem, used with:	Rentals
The New York, New Haven, and Hartford Railroad Company—	
Grand Central Terminal at Forty-second Street, offices, tracks, and facilities within the terminal zone at New York, N. Y.; for the term of charters from Mar. 17, 1848, under agreement of that date between the New York and Harlem and The New York and New Haven Railroad Company, which agreement was assigned on Apr. 1, 1873, to The New York Central and Hudson River Railroad Company; stipulated payment a proportion, on basis of cars handled, of 4.25 per cent per annum on valuation of $53,991,628.17, maintenance, operation, and taxes	$1,641,187.28
Passenger station at One hundred and twenty-fifth Street, New York, N. Y.; for indefinite period from Jan. 1, 1915, terminable on 30 days' notice; stipulated payment a proportion, on basis of number of trains stopped at station, of $66,000 per annum	10,598.82
Tracks, 11.94 miles, from Grand Central Station, New York to Woodlawn, N. Y.; for the term of charters from Mar. 17, 1848; stipulated payment 12.21 cents for each full-paid passenger, 4.07 cents for each commuter passenger, and 40 per cent of the receipts from mail, express, and excess baggage; three-fifths credited to maintenance and operation and two-fifths to income	556,529.04
Yard track facilities at Mott Haven Yard, N. Y., for indefinite period from July 24, 1907, terminable on one year's notice; stipulated payment a proportion, on basis of cars handled, of 4.25 per cent per annum on valuation of $2,234,919.55, maintenance, operation, and taxes	50,846.68

In like manner the Commission inventoried and valued all of the Boston Terminal property in its valuation as of June 30, 1915, of the Boston Terminal Company (R. 425, 429) with similar reference to the New Haven's terminal or trackage rights (103 I. C. C. 707, 730).

Mandamus not the appropriate remedy.—The Court of Appeals, considering the instruments granting the rights and the New Haven's allegations that such rights constituted estates in the properties, found that the New Haven's rights "were in the nature of a perpetual easement in the Harlem road," that the New York legislature had "impressed in perpetuity a dominant servitude upon the property of its own corporation, the Harlem" (R. 643), "that the New Haven has a base fee in the undivided half of the railroad terminal and its approaches" (R. 646), and that looking through "the corporate shell of the terminal company" the New Haven could be seen as one of the "real owners" (R. 648) whose property rights to be valued were its "*ownership* and perpetual right of use * * * in the terminal tracks and station" (R. 649).

These findings by the Court of Appeals amount, as we read them, to the determination of questions of title to property in which the Central, the Harlem, and the Boston Terminal have interests and rights necessarily involved.

The issue of joint ownership or the possession of owners' estates in these several properties may

sometime arise between the carriers holding the record title to the properties and the New Haven. It is respectfully submitted that such issue should not be determined in a mandamus action in which the carriers most interested are not parties and have no opportunity to be heard. Mandamus is not the appropriate remedy to adjudicate questions of title to property (38 C. J. 589, 923), and especially is this true where the rights of third parties are involved (38 C. J. 854, 923). See also *United States ex rel. Redfield* v. *Windom,* 137 U. S. 636, 644.

Aside from such considerations, however, the Court of Appeals, as we read its decision on this issue, has fallen into a repetition of the error which this Court pointed out in *Interstate Commerce Commission* v. *Waste Merchants Association, etc.,* 260 U. S. 32. In that case this Court said (pp. 34–35):

> Petitioners sought in the proceeding to set aside the adverse decision of the Commission on the merits and to compel a decicision in their favor. The Court of Appeals granted the writ. This was error. Mandamus can not be had to compel a particular exercise of judgment or discretion, *Riverside Oil Co.* v. *Hitchcock,* 190 U. S. 316; *Ness* v. *Fischer,* 223 U. S. 683; *Hall* v. *Payne,* 254 U. S. 343; or be used as a writ of error, *Commissioner of Patents* v. *Whiteley,* 4 Wall. 522. The case at bar is not like *Interstate Commerce Commission* v. *Hum-*

> *boldt S. S. Co.*, 224 U. S. 474, and *Louisville Cement Co.* v. *Interstate Commerce Commission*, 246 U. S. 638, where the Commission had wrongly held that it did not have jurisdiction to adjudicate the controversy; nor is it like *Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 252 U. S. 178, where the Commission wrongly refused to perform a specific, peremptory duty prescribed by Congress.

In holding that mandamus was the proper remedy in this case, the Court of Appeals said (R. 653):

> We think this case is controlled by the decision in *Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 252 U. S. 178.

That case arose out of paragraph (*b*) Second of Sec. 19a, which, as originally enacted, required the Commission to find and report in respect of lands *inter alia*, "separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." These words were repealed by Act of June 7, 1922.

Prior to the repeal the Commission, relying on the impossibility of making a rational determination in a matter so inherently speculative, and notwithstanding said plain and explicit language, in its valuation of the Kansas City Southern Railway Company, refused to hear proof concerning said "excess costs." The carrier sought a writ of mandamus and the case eventually reached this Court.

Examining the "face of the statute" and the "nonaction of the Commission in a matter purely ministerial" this Court properly directed that the writ issue to compel the Commission to hear the proof and act upon it.

It, however, has been clearly shown that in the instant case "the duty is not thus plainly prescribed, but depends upon a statute * * * the construction or application of which is not free from doubt" and therefore involves a "discretion which can not be controlled by mandamus." *Wilbur* v. *United States, supra,* 219.

Chief Justice Wheat concluded that "the Commission did not err" but he stated (R. 449):

> Even if it did, it is at least gravely doubtful whether this Court has the power by mandamus to require it to correct the error. (Citing *United States ex rel. Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission, supra.*)

In that completely parallel case the Court of Appeals, on June 1, 1925, affirmed a judgment of the Supreme Court of the District of Columbia dismissing the carrier's petition for mandamus seeking to require the Commission to report "the economic or exchange value" instead of "a so-called rate-making value" and to report the original cost, the costs of reproduction, and "the value" of its "right and interest" in The Kansas City Terminal Railway Company.

The Court of Appeals, speaking through Mr. Chief Justice Martin, said (p. 694):

> The reports of the Commission are brought by reference into the record. They disclose that each of these objections, *including the reference to properties alleged to have been omitted,* was presented to the Commission by the appellants, and was fully investigated, considered, and passed upon by it. * * *
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> * * * * *
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> * * * it is manifest that the Commission fully assumed and exercised the authority or jurisdiction imposed upon it by the act, and that the real complaint of the appellants is, not that the Commission refused to consider the points in question, but that it considered them and thereupon decided them erroneously. The real relief sought by the appellants, accordingly, is that the valuation reported by the Commission be set aside, and other valuations ordered. This clearly brings the case within the well-established rule that the action of mandamus cannot be used as a substitute for an appeal, nor as a writ of error. (Italics ours.) (Certiorari denied, 269 U. S. 570.)

We read the foregoing decision, which this Court refused to review upon a petition for certiorari, as plainly holding that Sec. 19a of the Act contains no provision which could be construed as explicitly commanding the Commission to find a value other than for rate-making purposes, nor any explicitly

directing the Commission to inventory or value rights of use held by one carrier in property owned and used by another common carrier.

The Court of Appeals distinguished this former decision with the statement (R. 652):

> There the commission valued all the property of the carrier; here it refused to value certain of the property.

Inasmuch as the Kansas City Southern's rights to operate its trains into the Kansas City terminal were in essential respects similar to the rights of the New Haven to operate its trains into the New York and Boston terminals, and inasmuch as the Commission pursued the same methods of valuation in both cases, we read the decision in the present case as wholly in conflict with its former correctly reasoned decision.

The former case being heard upon a motion to dismiss, the facts stated in the petition, for the purpose of the decision, were taken as true. The petition alleged that the Commission had held it would separately value the property of the Kansas City Terminal Railway Company and had failed and refused to include in the inventory or single-sum value of the petitioner's property anything to represent its interest or right of use therein, and that the petitioner with eleven other railroads owned all the stock of the Terminal Company and had entered into contracts to use its property for a period of 200 years upon the payment of rental sufficient

to pay operating and maintenance expenses and interest on its securities, the entire rental to be apportioned among the several using carriers in proportion to the extent to which each made use of the facilities. The petition stated:

> The Terminal Company is, in substance, a joint agency of each of the twelve constituent lines in the performance of its freight and passenger service in Kansas City, Missouri. Each is the equitable *owner* of one-twelfth of the terminal property. (Italics ours.)

Since the New Haven's petition for the writ of mandamus, together with its attached Exhibits Nos. 1, 2 and 3, clearly shows on its face that the Commission in the instant case also fully exercised its jurisdiction under the Act, we respectfully submit that the Court of Appeals was in error in reversing in this action the Commission's decision made upon full consideration of the facts and the law respecting the New Haven's contentions to joint ownership and rights of use in the physical properties of other carriers also subject to the Act.

The decision of the Court of Appeals, holding that the New Haven enjoys an undivided ownership in the several properties, reverses the Commission's decision not only in the New Haven valuation but prior decisions made in the valuation of the New York Central System (including the Harlem) and the valuation of the Boston Terminal Company. This issue of the classification of the property for

valuation under Sec. 19a was a matter specifically within the jurisdiction of the Commission and necessarily decided by it in each of the three valuations mentioned.

The decision of the Court of Appeals as to the Boston Terminal property is also read by us to be in conflict with a decision of the Circuit Court of Appeals (First Circuit) in *Boston Terminal Company* v. *Gill,* 246 Fed. 664, hereinafter discussed on page 99.

The Court of Appeals, as a basis for its conclusion that this case should be controlled by this Court's decision in *Kansas City So. Ry.* v. *Int. Com. Comm., supra,* rather than by its own prior decision in *United States ex rel. Kansas City Southern Ry. Co. et al.* v. *Interstate Commerce Commission, supra,* quoted the comment of this Court in *United States* v. *Los Angeles R. R., supra,* 310. The pertinent part of the quoted comment is (R. 654–655):

> "In directing the commission to investigate the value of the property of the several carriers, Congress prescribed in detail the subjects on which findings should be made * * * and the carrier, being a party in interest, has the remedy by mandamus to compel the commission to make a finding on each of the subjects specifically prescribed. Kansas City Southern Ry. Co. v. Interstate Commerce Commission, 252 U. S. 178."

The Los Angeles & Salt Lake R. R. Company brought an action to annul an order of the Com-

mission determining the final value of the carrier's property under Sec. 19a of the Act. It alleged various errors committed, including the omission of property and the erroneous finding of a value for rate-making purposes. The District Court issued an order annulling the final valuation. *Los Angeles & Salt Lake Railroad* v. *United States,* 4 Fed. (2d) 736; 8 Fed. (2d) 747. On appeal, this Court declined to consider whether the charges made in the bill were well founded and ordered it dismissed.

It pointed out that final valuations were made by the Commission in the "exercise solely of the function of investigation," and operated to deprive the carrier of no property or right. It observed that conceivably errors may occur in each of the 1,800 valuations to be made which would never be of legal significance unless the valuations were used as evidence in some proceeding before the Commission or a court, and it concluded (273 U. S. 312):

> Congress has provided adequate remedies for the correction of errors in the final valuation and the classification thereof. The conclusions reached by the Commission must be submitted first in the form of a tentative report, § 19a, pars. (f) and (h). When so submitted, the carrier is authorized to file a protest and to be heard thereon, par. (i). * * * When the final report is introduced in evidence the opportunity to contest the correctness of the findings therein made

> is fully preserved to the carrier; and any error therein may be corrected at the trial. Specific findings may be excluded because of errors committed in making them.

It therefore held (pp. 311, 314):

> * * * Congress did not confer upon the courts power either to direct what this "tribunal * * *" * * * shall find, or to annul the report, because of errors committed in making it.
>
> * * * * *
>
> Its conclusions, if erroneous in law, may be disregarded.

If the proper classification of property for valuation purposes requires the Commission to adjudicate the many intricate questions of title which rest in the varying agreements for use of property as between carriers, and if its valuations prior to their use for any purpose are subject to court review for erroneous decisions on such questions, the result is that innumerable questions of title will be brought into litigation when no real dispute exists between the interested parties and when the valuations involved may never be used in evidence for any purpose.

It is submitted that the New Haven's allegations of injury herein are of anticipated injuries (R. 23), and, if well founded, relate to errors such as may be corrected when and if the valuation is used in evidence. Prior to such use they are not properly to be corrected either by mandamus or proceeding in equity.

In *United States ex rel. Ness* v. *Fisher,* 223 U. S. 683, this Court, quoting with approval from *Riverside Oil Co.* v. *Hitchcock,* 190 U. S. 316, 325, said (page 694):

> "* * * The writ never can be used as a substitute for a writ of error. Nor does the fact that no writ of error will lie in such a case as this, by which to review the judgment of the Secretary, furnish any foundation for the claim that mandamus may therefore be awarded. * * *"

It is submitted, therefore, that the Commission fully performed its *ministerial* duty under Sec. 19a in respect of the New Haven's property when it fully inventoried and valued all the property owned or used by it under lease from the other respondents, together with all intangible elements of value inhering therein and that it fully performed its *ministerial* duty in respect to the terminal properties over which the New Haven enjoys trackage rights when it fully valued said properties to the Central (including the Harlem) and the Boston Terminal with proper notation of the rights.

It is submitted also that in interpreting Sec. 19a—"a statute * * * the construction or application of which is not free from doubt"—and in deciding that the New Haven's "rights of use" should be classified as "important trackage rights," the Commission exercised a "discretion which can not be controlled by mandamus." (*Wilbur* v. *United States, supra,* 219.)

IV

The New Haven, by the grants of trackage rights, did not obtain a joint ownership in the physical properties and the Court of Appeals, by construction, has read into the grants conveyances not intended by the parties

During all stages of this litigation, it has been earnestly contended, on behalf of the Commission, that it fully performed its ministerial functions when it exercised its jurisdiction and determined that the New Haven's rights to operate into the terminal properties did not constitute an estate or joint ownership therein but represented "trackage rights" only; and that this determination, even if erroneous, is not subject to review in a mandamus proceeding.

If we are correct in this view of the matter, it should not be necessary to enter into a discussion as to the correctness of the Commission's determination. Nevertheless, the Court of Appeals examined into the nature of the rights and has, in our view, reversed the Commission's decision and instructed it as to how this issue should be decided.

In this situation, without in any way waiving the contention that the issue is not one to be determined by the court in this proceeding, we deem it necessary to present the reasons why, in our opinion, the Court of Appeals has erred in holding that the New Haven has an estate in the physical properties in question.

The New Haven has no record title to any part of the terminal property which is the subject of

this controversy. The record title to all the rights in public domain, the rights of way, the lands and the tracks, tunnels, overhead bridges, etc., between Woodlawn and Forty-second Street and to the terminal buildings erected thereon by the Central, is partly in the Central and partly in its lessor, the Harlem. The record title to all the rights in public domain, rights of way, lands, tracks, and structures in the South Station and its approaches at Boston is in the Boston Terminal Company. The owning companies have borrowed money on the strength of their title to these properties and have bonds outstanding secured by the properties.

The Commission, after considering the instruments granting the New Haven's rights, arrived at the conclusion that the New Haven's rights did not constitute any joint ownership or estate in the properties (R. 64, 66), and classified the New Haven's rights in its order as "important trackage rights" (R. 76).

In stating the reasons for its decision (R. 64, 66), the Commission noted that the New Haven had no investment in the properties, and that it bore no expense of the maintenance of the Harlem's tracks, and that the rent paid is chargeable to joint-facility rents directed to be taken into account and deducted as an expense in determining net railway-operating income under Sec. 15a.

The Supreme Court of the District, after consideration of the several instruments and the oral evidence of the New Haven, arrived at the conclusion

that the New Haven's rights to use the tracks of the Harlem were mer 'y trackage rights (R. 445), and that its rights to use the Grand Central Station were of the same general nature as its trackage rights over the Harlem's tracks (R. 447). In view of the general agreement of the parties that the treatment to be accorded the New Haven's right to use the Boston Terminal would be governed by the treatment accorded its rights to use the New York terminal (R. 67 and 401), no special consideration was given to the Boston situation (R. 449).

In arriving at his conclusion concerning the nature of the New Haven's rights, Chief Justice Wheat, after pointing out that counsel for the New Haven contended "that its rights constitute an actual estate in the property itself, to be carved out of the fee simple estate, that in truth it is an owner using its own property, not the user of another's property," stated: "The applicable principle seems to me to be that stated in *Union Pacific Ry. Co.* v. *Chicago, Rock Island & Pacific Ry. Co.*, * * *." (R. 442–443.) He carefully analyzed that case in the following language (R. 443–444):

> * * * That case arose out of a contract between the Union Pacific and the Rock Island Companies, by which the Union Pacific let the Rock Island Company "into the full, equal and joint possession and use of its main and passing tracks, now located and established, or which may be hereafter located and established," between certain points. Within a comparatively short time,

the Union Pacific Company attempted to repudiate the contract as *ultra vires*, one of its claims being that by the contract it had disabled itself from performing the duties imposed upon it by its charter, since the instrument was a lease and railroad leases had been denounced as *ultra vires* in *Thomas* v. *Railroad Company*, 101 U. S. 71; *Pennsylvania Railroad Co.* v. *St. Louis, Alton &c. Railroad*, 118 U. S. 290, and other cases.

The Rock Island Company brought an action against the Union Pacific for specific performance. The case was tried in the Circuit Court by Mr. Justice Brewer, who decided in favor of the Rock Island Company, upholding the contract, 47 Fed. 15. His decision was affirmed in the Circuit Court of Appeals, 10 U. S. App. 98, and by the Supreme Court of the United States, 163 U. S. 564. The decision of the case depended upon the nature of the contract and of the rights granted by it. In considering the nature of the contract, Mr. Chief Justice Fuller, delivering the opinion of the Court, after referring to the fact that in several places the instrument is called a "lease" and the parties are called "lessor" and "lessee," and pointing out that what it was styled by the parties did not determine its character, but that the Court was required to examine the entire contract, the relations of the parties, their connection with the subject matter, the circumstances under which it was signed, said at page 582:

"The contract provided that the Pacific Company hereby 'lets the Rock Island Com-

pany into the full, equal and joint possession and use of its main and passing tracks.' The possession here spoken of was such possession as the Rock Island Company would have when its engines, cars and trains were running over the tracks. The company had no possession before its trains came on the tracks or after they had run off of them, and while its trains were on the tracks its possession was only of the particular part occupied temporarily while running over them. Moreover, all trains were to be moved under the direction of an officer of the Pacific Company. The Rock Island trains coming upon a Pacific track immediately passed from the control of the Rock Island Company into that of the Pacific, and its officials were subjected to the orders of the Pacific's officers. And throughout the whole contract there does not appear to be a single provision which looks to any actual possession by the Rock Island of any of the Pacific property beyond that which was involved in its trains being run over the tracks under the direction of the other company. The contract in this regard was really an agreement for trackage rights, for running arranements, a 'terminal contract' with compensation on a 'mileage' or 'wheelage basis,' rather than a lease."

And at page 589: "* * * By the contract the Pacific Company parted with no franchise, and was not excluded from any part of its property or the full enjoyment of it. What it agreed to do was to let the

> Rock Island into such use of the bridge and tracks as it did not need for its own purposes. This did not alien any property or right necessary to the discharge of its public obligations and duties, but simply widened the extent of the use of its property for the same purposes for which that property was acquired, to its own profit so far as that use was concerned, and in the furtherance of the demands of a wise public policy."
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> Mr. Justice Brewer in his opinion in the Circuit Court, 47 Fed. 15, 23, said of the contract:
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> "* * * While the Rock Island is let into possession and use, the Pacific is not put out of possession and use. There is no surrender of the exclusive use of any portion of the Pacific's line. It remains in the undisturbed possession of every mile of its track; can operate all its trains, and discharge all the duties which it owes to the government or the public. A different question would arise if it had attempted by this instrument to dispose of the full possession of the same length of its track."

And we submit that a careful reading of the grants here involved in the light of that decision will disclose that Chief Justice Wheat correctly applied the principle in that case as his measure of the nature of the New Haven's rights when he concluded (R. 445):

> The same reasoning applied to the present case leads, I believe, to the conclusion that the New Haven's rights in the tracks of the

Harlem are no different in kind from those which the Rock Island had in the tracks of the Union Pacific Company. The language in the one is no broader than that in the other. The purposes, uses, and objects were identical, and, as pointed out, by the Supreme Court, 163 U. S. 584, such contracts are frequently made between railroad companies. See also *Brooklyn Crosstown R. R. Co.* v. *City R. R. Co.*, 51 Hun. 600; *Coney Island R. R. Co.* v. *Brooklyn Cable Co.*, 53 Hun. 169.

The grant of trackage rights over the Harlem's tracks.—The introduction of the first paragraph of the contract of 1848 (Ex. 7, R. 520) between the Harlem and the New Haven states its subject matter. The words "THIS AGREEMENT AND CONTRACT OF TRANSPORTATION" show, at the very outset, that the contract grants no joint ownership of physical property. The words of the grant are contained in the fourth paragraph of the contract, which reads that the New Haven (R. 520)—

> * * * shall have the *right to run* their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., *over the track or tracks of the road of the New York and Harlaem Railroad Company from the point of junction aforesaid to and into the city of New York,* * * * the said New York and New Haven Company furnishing their own haulage (Italics ours.)

Under the law of New York at the time of the Harlem's grant of trackage rights to the New Haven, title to real property could be conveyed only by deed under seal containing appropriate words of grant, or by will, or by the judgment of a court of competent jurisdiction. *Kent's Commentaries,* Volume IV, 491; *Long Island Railroad Co.* v. *Conklin,* 29 N. Y. 572, 584.

In these words of the contract there is no conveyance of land or structures; in them there is no grant of a right given the New Haven to construct tracks or structures upon the Harlem's right of way; the words import simply a *permission* to move its trains over the railroad of the Harlem between the junction and the City of New York with its own haulage.

The New Haven's agreement is to pay the Harlem "as full compensation for the use and occupation of their track or tracks as aforesaid, a certain sum for each passenger transported" (R. 521), and a division of the amounts actually received for the transportation of mails, express, and freight (R. 522–523).

The New Haven does not pay for an estate; it agrees to pay for its *permissive use* according to its actual exercise of the *permission.* And no words in the contract of 1848 obligate it to use the Harlem's tracks. The agreement is like that which was before the Circuit Court of Appeals in *Grand Trunk W. Ry. Co. et al.* v. *Chicago & E. I. R. Co.,* 141 Fed. 785. In that case suit was brought by several railroads having rights to use the tracks of the

Chicago & Western Indiana Railroad Company against the Chicago & Eastern Illinois Railroad Company, which enjoyed similar rights, to enjoin the latter from diverting its passenger trains from the tracks and Dearborn Street station of the Chicago & Western Indiana to the La Salle Street station of another carrier.

The rights of the Chicago & Eastern Illinois were held under a number of "leases" in which the Chicago & Western Indiana "granted, demised, and leased" to it for 999 years rights of use. The compensation was that proportion of interest, maintenance, etc., which its wheelage bore to the total wheelage of all users.

The Chicago & Eastern Illinois, claiming that its agreement amounted only to a trackage agreement and vested in it no estate and that it acquired under the agreements and leases the right to use the tracks and terminals or not, as it should from time to time see fit, answered that it violated no obligation assumed by it under the leases by diverting its passenger business to the La Salle Street station. (141 Fed. 794.)

The Court recited that careful scrutiny of the various leases and agreements revealed *no covenant to use but merely covenants to pay for use* (pp. 795–6, 798–9). Obligations to pay interest on bonds provided for in some of the agreements were referred to as the obligations of stockholders and not covenants of lessees (p. 797). In the so-called

"original lease" of 1879, the Western Indiana "granted, demised and leased" to the Eastern Illinois for 999 years "the right and privilege of using and running locomotives, cars, and other rolling stock * * * over and upon the main track or tracks of the railroad of the party of the first part * * * from its junction with the road of the party of the second part, at or near Dolton * * * to the passenger depot of the said party of the first part in the city of Chicago" (p. 786). Of this lease the Court said (p. 798):

> It may be greatly doubted whether this "original lease," so-called, was other than a mere operating agreement as to what is termed the "common property." *Union Pacific Railway Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 163 U. S. 564. * * * it was therein stipulated that it should have the mere right to use in common; *and such right to use without obligation to use* is found in every subsequent agreement between it and the Western Indiana Company. This is strong to show, if it be not absolutely convincing that the Eastern Illinois Company did not contract to assume an obligation to use for that long period of time; that it kept itself free to use these privileges or not, as its interests might dictate, stipulating to pay for such use as it made of them. (Italics ours.)

Paragraph (10) of the tripartite agreement of 1907 recognizes the New Haven's rights to cease or

diminish its use of the Harlem's tracks as its ingress to the terminal. (R. 602.) And in this connection it is noted that the original track of the Harlem at the time of the contract of 1848 extended to Canal Street (City Hall). In 1857 its line was shortened to Twenty-seventh Street, and in 1872 its passenger depot was changed to Forty-second Street, its present location. The contract of 1848 also provided for freight traffic, but for many years past the New Haven has operated only passenger trains south of Woodlawn, and those only to Forty-second Street.

Paragraph seventh of the 401-year lease reserved certain horse-car lines to the Harlem subject to trackage rights of the New Haven and the Central (R. 566), and paragraph ninth assigned to the Central (R. 567–568) the contract with the New Haven, except the New Haven's rights to operate below Forty-second Street over the said horse-car tracks (now leased to the New York Railways Co., I. C. C. Val. Rep. Vol. 27, 1, 133, 441, 461). Both the New Haven and the Central long ago ceased to exercise their rights to operate south of Forty-second Street.

The grant of terminal rights in Grand Central.—The "Tripartite Lease" of November 1, 1872, under which the Harlem constructed the old Grand Central depot at Forty-second Street and leased its use to the Central and the New Haven jointly with itself, also provided for the leasing of certain parts

of the depot to each of the grantees for their exclusive use. (Exhibit 10, R. 532.) This lease is no longer in effect. It was superseded and terminated by the "Tripartite Agreement" of July 24, 1907. (Ex. 13, Paragraph 23; R. 608.) The New Haven's privilege of using the Grand Central Terminal, therefore, is dependent upon the grant contained in the tripartite agreement of 1907. In this agreement the Central, "acting for itself and the Harlem, * * * does demise, let, and lease" to the New Haven, for a prescribed compensation, "*the use, in common with the Central,*" of the Grand Central Terminal and certain yards and appurtenances to the electric operation of trains, with a further provision that the New Haven's "*right to the use thereof* shall in no event exceed fifty (50) per centum of the maximum capacity of said Railroad Terminal or of any part thereof." (R. 593, 595.)

In these words there is no conveyance of land or structures; in these words there is no grant of joint ownership or the exclusive possession of any part of the land and structures; the grant is solely of a privilege of the "use in common."

The New Haven does not pay for an estate; it agrees to pay as compensation for its "use in common" that proportion of 4¼ per cent interest on the cost of construction and of expenses for maintenance and operation which its use bears to the entire use determined by counting the cars and

engines entering the terminal. (R. 595–600.) Except for the obligation to pay $160,179.92, representing a proportion of interest upon the capitalized cost of the old Grand Central Depot (part of which it had exclusively used), the New Haven need make no payment if it operates no trains into the terminal. (R. 475, 596.)

The act of the New York legislature.—By act of May 11, 1846 (Ex. 5, R. 510), the New Haven was permitted and authorized to construct and operate a railroad in New York, but its location was specifically confined to a line from the New York-Connecticut state line to point of connection with the Harlem at or near Williams Bridge (Woodlawn).

The New Haven's efforts to secure authority to extend its railroad from the state line into New York City had failed. (R. 457.) The New Haven had, however, obtained a reciprocal contract with the Harlem permitting it to operate over the tracks of that company into New York City (Ex. 4, R. 506), but the Harlem had intimated that it did not intend to fulfill its contract (R. 459). The New Haven's Board of Directors, after obtaining opinion of counsel, on February 15, 1848, authorized its President to pray for "Legislative sanctions to said contract." (R. 531.)

Thereafter the contract of March 17, 1848 (Ex. 7, R. 520), was signed and the act of March 29, 1848 (Ex. 8, R. 529), was its "legislative sanctions." This act does not impress a "dominant servitude"

on the property of the Harlem; it permits the New Haven to accept and use *permissive rights to* operate over the Harlem's tracks beyond the junction point to which it had been authorized to build and operate by the act of May 11, 1846. This *permissive franchise to operate* over the Harlem's tracks into the city of New York is limited to the New Haven's operating only "upon such terms and to such point as has been or may hereafter be agreed upon" by the two companies. (R. 530.)

The words of this act convey no ownership in the Harlem's physical property to the New Haven; these words grant the New Haven no part of the Harlem's right of way; the words of the act merely authorize and permit the New Haven to operate over the Harlem's tracks *if the Harlem agrees.* These words also authorize and permit the Harlem *to agree* to an arrangement which otherwise might have been questioned as *ultra vires.* 51 C. J. 767–768 (R. 445).

In *Union P. R. R. Co.* v. *Mason City & F. D. R. Co.,* 222 U. S. 237, this Court had before it again the question of the joint use of the bridge of the Union Pacific which had been in question in *Union Pacific R. Co.* v. *Chicago R. I. & P. R. Co., supra;* this time in relation to the Act of Congress providing the "means to construct the bridge" upon condition that other railroads be admitted to its use (p. 249). Speaking of the Act the Court said (247–248):

> The * * * act * * * provided that "all trains of all roads terminating at said

> river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation."
>
> * * * * *
>
> It [the Act] bridged the river—"the transportation gap" * * *. It did no more. It did not intend to give to other roads a right in the terminal of the Union Pacific Company beyond what was *necessary for a right of passage over the "gap"*, giving the same continuity to other roads which the Union Pacific Company had.
>
> * * * * *
>
> It gave only what the Chief Justice, in 163 U. S., called "running rights." (Italics ours.)

And at page 250 the Court added:

> The rights asserted transcend anything given by the bridge Act. The tracks of the Union Pacific Company, as urged by its counsel, *are its property,* * * *. (Italics ours.)

The New Haven's claim that its construction of this legislation was confirmed by the act of May 7, 1903 (Ex. 12, R. 582), has been well answered in the analysis of the latter act by Chief Justice Wheat, wherein he clearly shows that said act recognizes the New Haven as having merely a permissive use. (R. 445–447.) (Cf. Laws of New York, 1904, chap. 639.)

If the act of March 29, 1848, were capable of the construction placed upon it by the Court of Appeals, it would be an unconstitutional taking of the

Harlem's property without due process or just compensation. The constitution of the State of New York, 1846, contains the following provisions:

> Section 6, article 1: * * * Nor shall private property be taken for public use without just compensation.
>
> Section 7, article 1: When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record as shall be prescribed by law. * * *.

The grant of terminal rights in Boston.—The New Haven's right to use the Boston property is obtained by virtue of Chapter 516, laws of Massachusetts, 1896 (Ex. 16, R. 615), under which the Boston Terminal Company was chartered "*to construct* and *maintain* a union passenger station * * * and to *provide* and *operate* adequate terminal facilities for the several railroad companies * * * and for the accommodation of the public * * *." It is therein provided that the compensation to be made by the companies using the terminal "shall be deemed a part of their operating expenses," and these payments are proportioned to the use made of the terminal. (R. 621.)

The New Haven admits in its reply that the Boston Terminal Company owns and operates the Boston Terminal property. (R. 429.) Notwithstanding this admission, the Court of Appeals finds

in its opinion that "The Terminal Corporation as such, assumed no liability either in construction, maintenance, operation, or otherwise," and that the Court would therefore look "through the corporate shell of the Terminal Company" to see "the real owners, the railway companies" (R. 648), and it held that the rights of the New Haven to be valued were "the ownership and perpetual right of use" in the terminal property (R. 649).

This decision of the Court of Appeals is read by us to be in conflict with *Boston Terminal Company* v. *Gill, supra,* in which the United States Circuit Court of Appeals for the First Circuit affirmed and upheld a decision of the United States District Court that the Boston Terminal Company is a corporation organized for profit and engaged in the business of owning and operating its terminal in Boston for profit so as to render it liable for an excise tax of the United States. To the same effect is *Houston Belt & Terminal Ry. Co.* v. *United States,* 250 Fed. 1.

The corporations insisted that they were not so organized or engaged in business and that the business conducted on the property was that of the individual railroads using their terminals.

Since the Boston Terminal Company sold bonds secured by its property to obtain the money to construct the terminal, since it actually constructed and maintains that terminal, since its business of permitting the railroad companies to operate their trains over its property is the operating of a termi-

nal in the only manner in which a terminal company can operate, and since it is a common carrier under the Act, we submit that the Court of Appeals should not have undertaken to hold that the Boston Terminal "assumed no liability either in construction, maintenance, operation, or otherwise." It is also submitted that the New Haven's right to use the South Station is of the same nature as its trackage and terminal rights in New York. (R. 67, 401, 449, 647.)

Practical construction by the parties.—As pointed out by this Court in *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co., supra,* 584, contracts for trackage rights are "frequently" made between railroad companies. The Circuit Court of Appeals in *Chicago G. W. Ry.* v. *Northern Pac. Ry. Co.,* 101 Fed. 792, has similarly observed that contracts between railroads similar to the one in suit are not uncommon and the obligations of the companies entering into them are commonly well understood (p. 793).

Like the present controversy, this case involved a trackage agreement, and in construing the contract the Court said (pp. 795–796):

> It is a canon in the interpretation of contracts that the practice of the parties under them may furnish a solid basis on which their construction may rest.
>
> "Tell me," says Lord Chancellor Sudgen, "what you have done under a deed, and I will tell you what that deed means."
>
> * * * * *

> There is in this case no inconsistency between the terms of the contract and the practice of the parties under it.
>
> * * * * *
>
> The contract related to a subject-matter peculiarly within the knowledge of all the contracting parties, and they, better than any one else, knew the duties and obligations it imposed on them, respectively; and having agreed in placing the same construction on its words or its implications—and it is immaterial which—for such a long period and *that construction harmonizing with the provisions of the contract, and certainly not being inconsistent with anything contained therein, it is now too late for one of the parties, or the court, to change it.* (Italics ours.)

See also *Central Trust Co. of New York et al.* v. *Wabash, St. L. & P. Ry. Co. et al.*, 34 Fed. 254, 257–258.

The original Act to regulate commerce, passed February 4, 1887, created the Interstate Commerce Commission and required sworn annual reports from carriers concerning their accounts and their operations. The New Haven filed its first report in response to this law for the year 1888. (Ex. No. 17, R. 631.) In each report to and including the last one filed before this suit was instituted (Ex. No. 20, R. 636), the New Haven reported to the Commission its operations of the property in dispute under "Class (5)," "Line operated under

trackage rights," which the printed instructions of the report explain as follows:

> Class (5) includes all tracks operated and maintained by others but over which the respondent has the right to operate some or all of its trains. *In the road of this class the respondent has no proprietary rights but only the rights of a licensee.* (Italics ours.)

This long continued practical interpretation under oath by officials of the New Haven should receive greater weight than the controversial one recently placed thereon by its counsel.

Especially is this true where the New Haven made similar classification of its rights in its reports to its own stockholders (Ex's. 21–22, R. 636–637) and where, in reporting its use of the tracks, the New Haven had a choice of several classifications in the forms arranged by the Commission.

If the New Haven believed throughout these years that it was a *joint owner,* it could have scheduled its joint operation under "Class (1)," "Line owned by Respondent." The Commission's instructions are specific to this effect:

> Road held by the respondent as *joint or common owner* or a *joint lessee* or under *any joint arrangement* should be shown in its appropriate class and the entry of length should be of the entire length of the portion jointly held. The class symbol should have the letter (*J*) attached, and full particulars showing all of the *joint or common title*

> *holders and the extent of their respective interests should be shown in a memorandum attached to the schedule.* * * * (Italics partly ours, Exhibit 20, R. 636.)

It is inconceivable that the Central would spend millions of dollars for improvements on the Harlem's line from Woodlawn to and including the terminal if one-half of every dollar so spent were an outright gift to the New Haven; it is equally inconceivable the New Haven would pay a rental (R. 426–427) for the use of property in which it enjoys a joint ownership.

In *Chicago G. W. Ry.* v. *Northern Pac. Ry. Co., supra,* the Circuit Court of Appeals considered the obligations of the parties to such contracts for joint use of tracks, saying (p. 793):

> Contracts between railroad companies similar to the one in suit are not uncommon, and the obligations of the companies entering into them are commonly well understood. While such contracts provide for the *joint use* of the railroad track, it is *obvious* that the several companies can not each have its own time-table, train master, tower men, operators, and the like for regulating the movement of its trains over the joint track. The regulation and movement of trains over the joint track must necessarily be committed to a single head. *That is a business which admits of no divided authority.* And so, too, it must be made the special duty of some one of the companies to keep the joint track and its appurtenances in good order and condi-

tion for the running of trains. (Italics ours.)

Under the several grants the New Haven is neither given the right to regulate nor charged with the duty of maintaining any of the property permissively used. The New Haven exercises no direct control over the movement of its trains over any of the tracks and terminals in question. It has *no possession* of any of the property except as its trains are passing over the tracks and into the terminals. It can not go upon the property to make repairs even should it deem such repairs necessary to insure the safety of its passengers. It can not issue any bonds secured by the physical property composing the terminals. It can not assign its privilege of using the terminals nor does it enjoy any of the characteristic privileges of a joint owner under the practical and long-continued construction placed upon the agreements by the parties themselves.

In this situation the Commission and the Supreme Court of the District of Columbia were correct in their holding that the owning carriers did not part with any ownership in or possession of their properties.

The results of the Court of Appeals' decision.— In support of its contrary finding that the New Haven's rights in the railroad terminal and its approaches (which would embrace the tracks of the Harlem) amounted to a *base fee in an undivided half thereof* (R. 646), the Court of Appeals relies

upon the decision of this Court in *Georgia* v. *Cincinnati So. Ry., supra,* and a decision of the Supreme Judicial Court of Massachusetts in *Proprietors of Locks and Canals* v. *Boston & Maine Railroad,* 245 Mass. 52, 139 N. E. 839.

In the case of *Georgia* v. *Cincinnati So. Ry., supra,* where the State of Georgia granted for the use of the railway a *portion of the right of way of the state-owned* Western & Atlantic Railroad between certain points and later undertook to repeal the act on the ground that it granted merely a license, this Court said (p. 28):

> A grant of the use of a right of way is the grant of a right of way in the ordinary meaning of words, * * *.

As we read its decision, the Court of Appeals has overlooked that the words "right of way" have a twofold meaning. As stated in *Corpus Juris:*

> The term has a twofold signification; it sometimes is used to describe a right belonging to a party, a right of passage over any tract; a mere intangible right to cross; a right of crossing; and it is also used to describe that *strip of land* which railroad companies take *upon which to construct their roadbed.* (54 C. J. 824. Citing *Central Trust Co.* v. *Wabash, etc., R. Co.,* 29 Fed. 546, 555.) (Italics ours.)

The agreements granting the New Haven *permission* to operate over the tracks of the Harlem and into the structure of the terminal of the Cen-

tral do not convey any *land* "upon which to construct their roadbed." The State of Georgia, on the other hand, conveyed away a specific and definite portion of the state-owned right-of-way lands between the points named in the grants *upon which the Cincinnati Southern constructed its railroad for its exclusive use and occupation.*

In *Proprietors of Locks and Canals* v. *Boston & Maine Railroad, supra,* there was a lease of three parcels of *land* to a railroad company during its continuance or until the Commonwealth purchased the railroad under power reserved in granting the charter or until default in payment of rent. The Court, considering this lease and its habendum clause, pointed out that the term may never end since its continuance depends upon events which may never happen and said:

> The effect of the words used was to convey a base fee.

It is to be noted that in that case again, as in the *Cincinnati Southern case,* the grant was of *land* and that the grantor parted with possession and control of the *land* described in the instrument.

It seems to us that the Court of Appeals has been so impressed with the length of the term specified in the grants to the New Haven that it has overlooked or misconstrued the nature of the subject matter of the grants, i. e., a *permission* to participate with the owner in the use of the property.

In *Harrison* v. *Fortlage,* 161 U. S. 57, 63, this Court said:

> The court is not at liberty either to disregard words used by the parties, descriptive of the *subject matter,* or of any material incident, or to insert words which the parties have not made use of. (Italics ours.)

The New Haven, we submit, can not have an easement in the Harlem's property since there is no dominant tenement to which it attaches. (19 C. J., 862–864; *Drucker* v. *Manhattan R. Co.,* 213 N. Y. 543 and 214 N. Y. 658, 108 N. E. 74 and 1093; *Nellis* v. *Munson,* 108 N. Y. 453.)

Nor can the New Haven have a base fee in *an undivided half* of the Grand Central Terminal when its per cent of actual permissive use on June 30, 1915, which was the basis of aportionment sought, amounted to only 41.93 per cent. (R. 61, 65.)

Since the New Haven at the time of this suit had continuously reported the rights in controversy as trackage rights described as "no proprietary rights but only the rights of a licensee" (Ex. 20, R. 636), and since this construction harmonizes with the practical construction of the parties, we read the decision of the Court of Appeals as in effect making for the parties, by construction, different agreements than the parties either made or intended. *Green et al.* v. *Biddle,* 8 Wheat. 1, 89–90, and *Gavinzel* v. *Crump,* 22 Wall. 308.

The Court of Appeals, we submit, has erroneously failed to apply the applicable decision of this Court in *Union Pacific R. Co.* v. *Chicago, R. I. & P. R. Co., supra,* and has erroneously, in a mandamus proceeding, reviewed and reversed the Commission's classification of the New Haven's rights as "trackage rights," and has so construed the contracts as to make for the New Haven "better agreements than they themselves have been satisfied to make." *Green County, Kentucky* v. *Quinlan,* 211 U. S. 582, 596.

CONCLUSION

For the foregoing reasons it is submitted that the judgment of the Court of Appeals should be reversed and the judgment of the Supreme Court of the District of Columbia dismissing the petition affirmed.

Respectfully submitted.

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APPENDIX

SEC. 19A OF THE ACT

The material provisions of Sec. 19a of the Interstate Commerce Act (37 Stat. L. 701, as amended) are as follows:

(a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less de-

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eral States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this Act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this Act shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Upon the completion of the valuation herein provided for the Commission shall

thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

* * * * *

(h) Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein stated, and before such valuation shall become final, the Commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the Commission shall be of the opinion that its valuation should not become final,

it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

(j) If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original

order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

SEC. 15A OF THE ACT

The material provisions of Sec. 15a of the Interstate Commerce Act (41 Stat. L. 488) are as follows:

(1) When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices, relating thereto; the term "carrier" means a carrier by railroad or partly by railroad and partly by water, within the continental United States, subject to this Act, * * * and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any

particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: * * *.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. * * * The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

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APR 4 1

In the

Supreme Court of the United States.

October Term, 1931.

No. 15

Interstate Commerce Commission,
Petitioner,

v.

The New York, New Haven & Hartford Railroad Company, Old Colony Railroad Company, Boston & Providence Railroad Corporation (Massachusetts), Boston & Providence Railroad Corporation (Rhode Island), Providence, Warren & Bristol Railroad Company, the Harlem River and Port Chester Railroad Company, Holyoke & Westfield Railroad Company, Providence & Worcester Railroad Company, Chatham Railroad Company, and Norwich & Worcester Railroad Company,
Respondents.

Brief for Respondents in Opposition to Petition for Writ of Certiorari.

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judgment of the Court of Appeals of the District of Columbia granting a writ of mandamus upon the application of the respondent railroad companies, ordering the petitioner, in making its final valuation of their properties under the so-called Valuation Act, to ascertain and include in the report the value of their interests in certain tracks and terminals. The respondents raise no question as to the jurisdiction of this Court, but respectfully submit that although the excluded property interests are of great pecuniary value there are no special or important reasons why this Court, in the exercise of its sound judicial discretion, should review the case.

Jurisdiction to review cases upon certiorari to the Circuit Courts of Appeals was not conferred for the purpose of affording the defeated party a further hearing, but for the two particular purposes of securing uniformity of decision in the several circuits and of bringing up cases involving questions of importance which it is in the interest of the public to have decided by this Court. *Magnum Import Company, Inc.*, v. *Coty*, 262 U.S. 159, 163. Presumably the same considerations determine the exercise of the jurisdiction to review cases from the Court of Appeals of the District of Columbia, for paragraph 5 (c) of Rule 38 indicates the following as the character of the reasons for granting such review:

> "Where the Court of Appeals of the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court."

That none of those reasons are found in this case will appear from the discussion herein of the points raised in the petition.

Statement of the Case.

The Proceedings before the Commission.

By Act of Congress on March 1, 1913 (c. 92, 37 Stat. L. 701, and c. 210, 42 Stat. L. 624) commonly known as the Valuation Act, which now appears as section 19a of the Interstate Commerce Act, the Interstate Commerce Commission (hereinafter referred to as the Commission) was directed to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of the Act. Shortly thereafter the Commission entered upon an investigation, known as Valuation Docket No. 311, to ascertain the value as of June 30, 1915, of the property owned or used by the respondent railroad companies, all of which are controlled by or leased to The New York, New Haven & Hartford Railroad Company and together own an interstate railroad line through New York, Connecticut, Rhode Island, and Massachusetts operated as the New York, New Haven & Hartford system (hereinafter collectively referred to as the New Haven). On or about December 2, 1922, the Commission, having completed its investigation, published and served upon the New Haven a copy of its tentative valuation. The New Haven duly filed its protest against the failure of the Commission to ascertain and report the value of its rights in the tracks of the New York and Harlem Railroad Company (hereinafter referred to as the Harlem) from Woodlawn to Forty-third Street and in the passenger terminal known as the Grand Central Terminal and the approaches thereto, in New York City, and in the passenger terminal known as the South Station in Boston. Hearings on the protest were held before an examiner of the Commission at which testimony and documentary evidence was introduced by the New Haven in support of its protest. The issues were submitted to the Commission on May 18, 1926.

The following is a brief history of the New Haven's rights in the tracks and terminals in question, according to the

undisputed documentary evidence as set forth in narrative form in the respondents' bill of exceptions before the Court of Appeals (Record, p. 455 *ff.*).

The Tracks from Woodlawn to Forty-third Street.

The New York and Harlem Railroad Company was incorporated by the legislature of New York in 1831 and constructed its railroad from White Plains to New York City. The New York and New Haven Railroad Company, predecessor of The New York, New Haven & Hartford Railroad Company, was incorporated by the legislature of Connecticut in 1844, under a perpetual charter (Exhibit 2, Record, p. 495). After constructing its railroad from New Haven to the New York state line it applied to the New York legislature for authority to extend its railroad into New York City, but the authority was not granted (Record, pp. 457, 458). Thereafter, as a result of negotiations between the Harlem and the New Haven they entered into an agreement dated March 17, 1848, whereby, in the following language, the Harlem granted to the New Haven the right to run its trains over the Harlem's tracks into New York City (Record, p. 460, and Exhibit 7, Record, p. 520):

> "*Fourth.* It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction to Byram River, they shall have the right to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlem Railroad Company from the point of junction aforesaid to and into the city of New York, and as far over the same in the said City as the said Company's road shall extend, not however below the intersection of said Railroad and Pearl Street in

said City,—the said New York and New Haven Company furnishing their own haulage."

These rights were granted in perpetuity because the agreement was to continue in force "during the terms of their charters respectively and for all renewals thereof." Twelve days later the legislature of New York, by Act of March 29, 1848, amended the Harlem's charter in the following language (Record, p. 462, and Exhibit 8, Record, p. 529):

> "The New York and New Haven railroad company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business, over the road of the New York and Harlem railroad company, from the point of junction of the roads of said companies at or near Williams' Bridge, in the county of Westchester, to the City of New York, and as far into the said city as the said Harlem railroad may extend, upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a copy of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this state; and to take, transport, and convey persons and property upon the said Harlem Railroad, by the power and force of steam or animals or any mechanical power or combination of the same."

The above-mentioned agreement was duly authenticated and filed in the office of the Secretary of State, as provided in the Act (Record, p. 463). The New Haven has enjoyed and exercised the rights so granted from that day to this. On April 1, 1873, the Harlem leased its railroad to the New York Central and Hudson River Railroad Company (hereinafter referred to as the Central) for a term of four hundred and one years, but by paragraph Ninth the lease was made expressly subject to the rights of the New Haven

under the agreement (Record, p. 465, and Exhibit 11, Record, p. 559). The New Haven claimed that under the agreement it had a perpetual easement in the railroad of the Harlem from Woodlawn to Forty-third Street, and that, by virtue of the statute subjecting the Harlem's charter to the dominant rights of the New Haven upon the authentication and filing of the agreement in conformity therewith, the easement acquired the added advantages of a franchise.

The Grand Central Terminal.

The original terminal of the Harlem at Canal Street was moved north to Twenty-seventh Street in 1857, and further north to Forty-second Street in 1872. On November 1, 1872, the Harlem, the Central, and the New Haven entered into a tripartite lease whereby the Harlem was to construct the original Grand Central Depot at Forty-second Street and lease it to the Central and the New Haven for the joint use and occupancy of all three companies (Record, p. 464). Following the passage of an Act of May 7, 1903, requiring the substitution of electricity for steam as a method of operation in Park Avenue, the three railroad companies entered into a further agreement dated July 24, 1907, providing for the construction of the present Grand Central Terminal and its approaches as far north as Fifty-ninth Street (Record, p. 470, and Exhibit 13, Record, p. 593). Paragraph 3 provided:

> "The Central Company, acting for itself and the Harlem Company, as hereinafter authorized, in consideration of the rents hereinafter reserved to be paid by the New Haven Company, and in consideration of the covenants on the part of the New Haven Company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease unto the New Haven Company, during the term of the New Haven Company's charter and all renewals thereof, including

> the charter of any company which shall operate the present railroad of the said New Haven Company, the use, in common with the Central Company, subject to all the provisions of this agreement of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic, provided, however, that the New Haven Company's right to the use thereof shall in no event exceed fifty (50) per centum of the maximum capacity of said Railroad Terminal, or any part thereof"—

and "as compensation for the premises hereby demised" the New Haven was to pay interest on the cost of construction and a proportion of the annual expenses for maintenance and operation. Paragraph 12 provided that the terminal should be under the sole charge and direction of a terminal manager appointed by the presidents of the Central and the New Haven and removable at any time upon written notice by either of them. Paragraph 25 provided that the covenants and agreements should remain in force during the term of the demise which by paragraph 3 was to continue "during the term of the New Haven Company's charter and all renewals thereof," and therefore in perpetuity. The New Haven claimed that this agreement gave it the perpetual possession and enjoyment of one undivided half of the terminal property, and that, as the agreement could be terminated only for non-payment of rent or upon the termination of its charter, neither of which events was within the control of the Harlem or the Central, it had an estate in base fee.

The South Station.

By Act of June 9, 1896, the legislature of Massachusetts incorporated The Boston Terminal Company with power to construct and maintain a union passenger station for the five railroad companies mentioned in the Act, including four

of the respondents herein, each of which was authorized to subscribe for 20% of its capital stock (Record, p. 477, and Exhibit 16, Record, p. 615). Section 9 provided:

> "All said railroad companies upon the completion of said station shall use the same, and the terminal facilities provided by said terminal company on the land hereinabove authorized to be taken for all of their terminal passenger business in Boston, instead of the passenger terminals now used by them, and the Supreme Judicial Court, or any justice thereof, shall have jurisdiction in equity to enforce this provision."

The Act directed the railroad companies to pay to the terminal company the amounts necessary to pay the expenses of its corporate administration and of the maintenance and operation of the station, interest on its bonds, and a dividend of 4% on its capital stock, all in proportion to their respective use of the property. Section 25 provided that the terminal company should pay a franchise tax to Massachusetts upon its capital stock—

> "But its real estate required by this act to be used by said railroad companies shall be assessed to and the taxes thereon shall be paid by said railroad companies, and in the assessment of franchise taxes upon said railroad companies each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act."

At the time of the valuation investigation the proportion of use as between the New Haven affiliates and the Central, as lessee of the Boston & Albany Railroad, was 75% by the former and 25% by the latter. The New Haven claimed that its statutory right and obligation to use the terminal property, together with the other provisions of the Act, gave it a perpetual easement therein.

The Final Valuation.

On or about January 14, 1930, the Commission made public and served on the New Haven its report and order dated November 13, 1929, purporting to fix the final valuation of its property. The portions of the report relating to the tracks and terminals in question appeared under the headings "Terminal Property at New York City" and "The Boston Terminal Company" (Record, pp. 60, 67). The report showed that, although the Commission found the rights of the New Haven in the tracks and terminals to be "valuable and essential to the operation of its property as a whole," "a valuable asset," it had refused to ascertain and report any value for those rights, on the ground that they were not entitled to be valued "for rate making purposes." As to the tracks from Woodlawn to Forty-third Street, the report stated (Record, p. 64):

> "In our finding of value of the property owned or used in common carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right. We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole. Nevertheless, for the purpose of finding a rate base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers."

As to the joint use of the Grand Central Terminal, it stated (Record, p. 66):

> "The right to use these extensive terminal facilities is a commercially valuable contract right owned by the

carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value, for rate-making purposes, of the carrier's property owned or used in common carrier service, no specific value will be reported for the right of the carrier to the use of this property."

The Proceedings in Court.

On July 3, 1930, the New Haven filed in the Supreme Court of the District of Columbia its petition for a writ of mandamus directing the Commission, in the performance of its statutory duty, to ascertain and report the value of its rights in the tracks and terminals in question. The Commission answered that it had ascertained the value of the physical property, but not of the incorporeal rights of the New Haven therein, and had reported the entire value of the tracks from Woodlawn to Forty-third Street and of the Grand Central Terminal in the inventory of the Central, as exclusive operating lessee of the Harlem, and the entire value of the South Station in the inventory of The Boston Terminal Company. The pleadings and evidence showed that the action of the Commission in confining itself to the valuation of the physical property was in accordance with a rule which it had adopted for its own convenience and administration. The report on the valuation of the New Haven made express reference to Appendix 3 of its report on *Texas Midland Railroad,* 75 I.C.C. 1, for a statement of the methods of valuation employed (Record, p. 127). The applicable extracts from Appendix 3 were annexed to the petition, and laid down the broad rule that, where one carrier had a joint right to use property of another carrier, the physical property would be valued as a whole to the latter, or to its exclusive operating lessee, and that no part of the value of the property would be assigned to the right of the first carrier to use it.

The case was heard before Mr. Chief Justice Wheat of the Supreme Court of the District of Columbia, on February 12, 1931. On April 1, 1931, he handed down a "Memorandum Opinion," concluding that the Commission did not err in declining to value the New Haven's rights (Record, p. 434). His conclusion was based upon the practical difficulties inherent in undertaking to place a value on the many and varying rights of one carrier to use the property of another, and that the New Haven's rights were no different in kind from the ordinary trackage and terminal rights resulting from contract arrangements between carriers. On April 3, 1931, judgment was entered dismissing the petition and the New Haven noted an appeal.

The appeal was argued before the Court of Appeals of the District of Columbia, which, on January 18, 1932, handed down its unanimous opinion written by Associate Justice Van Orsdel, reversing the judgment of the Supreme Court of the District of Columbia and ordering a writ of mandamus in accordance with the petition (Record, p. 641). The Court decided that under the agreement of March 17, 1848, the New Haven had a perpetual easement in the railroad of the Harlem, and that the Act of March 29, 1848, amending the Harlem's charter, subjected its railroad to a dominant servitude in favor of the New Haven constituting a perpetual franchise; that under the agreement of July 24, 1907, the New Haven had a base fee in an undivided half of the Grand Central Terminal; and that under the Act of June 9, 1896, the New Haven acquired an ownership and perpetual right of use in the property of The Boston Terminal Company; that all of the foregoing rights were "property" owned and used by the New Haven and accordingly entitled to valuation under section 19a; that the Commission had no power to limit its valuation to a value "for rate-making purposes" or in so doing to exclude such rights from valuation; and that the failure of the Commission to ascertain and report the value of those rights was a breach of duty for which mandamus was the proper remedy.

STATUTES.

The Valuation Act of March 1, 1913 (c. 92, 37 Stat. L. 701), now appearing as section 19a of the Interstate Commerce Act, was amended in certain respects on June 7, 1922 (42 Stat. L. 624), and the following are the material provisions thereof as so amended:

"Sec. 19a. (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

"(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the method by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for

any differences between any such value, and each of the foregoing cost values.

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

"Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

"Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

"Fifth. . . .

"(e) Except as herein otherwise provided, the Commission shall have power to prescribe the method of

brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

Argument.

The contentions of the Commission will be discussed in the order in which they appear in Part V of its brief:

A.

ALTHOUGH IN CERTAIN ASPECTS THE CASE IS OF IMPORTANCE IN THE VALUATION OF RAILROAD PROPERTY, THE DECISION OF THE COURT OF APPEALS IS SO MANIFESTLY SOUND THAT THE QUESTION DOES NOT NEED TO BE SETTLED BY THIS COURT.

The Commission has declined to ascertain and report the value of part of the New Haven's property consisting of what the Court of Appeals held to be a "perpetual easement and franchise" in the tracks of the Harlem railroad from Woodlawn to Forty-third Street, a "base fee" in an undivided half of the Grand Central Terminal and approaches, and an "ownership and perpetual right of use" in the South Station, Boston. By subdivision (a) of section 19a Congress made it the duty of the Commission to "investigate, ascertain and report the value of all the property owned or used by every common carrier." The Commission has assigned various reasons for not ascertaining and reporting the value of this part of the New Haven's property, but, however far the practical and administrative considerations advanced by the Commission be pursued, we eventually return to the plain and elementary proposition that the Commission did not "ascertain and report the value of all the property owned or used" by this carrier. In so doing the Commission manifestly disregarded a direct and explicit duty imposed by Congress, and mandamus has been held by this Court to be the proper remedy in such a case.

1. The decision of the Court of Appeals will not necessarily require the revaluation of the property of other carriers.

Section 19a, commonly known as the Valuation Act, was enacted on March 1, 1913. The Commission proceeded with the valuation work and on July 31, 1918, published its first final valuation report, *Texas Midland Railroad,* 75 I.C.C. 1. The Commission, as stated in that report, did not know for what purpose the valuations were to be used:

> "The act does not specify any purpose for which a value is to be found or to which the valuation is to be put, except as it provides that all valuations by the Commission shall be *prima facie* evidence of the value of the property in all proceedings under the act to regulate commerce, in all judicial proceedings for the enforcement of that act, and in judicial proceedings brought to enjoin, set aside, annul or suspend, in whole or in part, any order of the Commission" (Report, p. 6).

Nevertheless it announced, in an elaborate appendix to the report, certain rules for the valuation of what it described under the general term "trackage rights." The rule may best be stated in the Commission's own language:

> "It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use. . . . Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers" (Appendix, p. 122).

The Commission says in its brief that, as the Act did not contain any "specific direction for the treatment to be accorded 'trackage rights,'" this was announced as a "reasonable method" for valuing them.

The difficulties which the Commission has encountered in subsequent valuations have arisen from the fact that the definition of "trackage rights" was too comprehensive. Some trackage rights constitute an estate or interest in the physical property itself and some do not. The trackage and terminal rights vested in the New Haven by the various contracts, leases, and statutes in evidence undoubtedly constituted estates in the property itself. In the language of the Court of Appeals:

> "From the foregoing it is apparent that the New Haven company acquired most valuable property and franchise rights in the use and operation of the railroad and terminal which are entitled to consideration in the fixing of a valuation upon all its property and its property rights."

These estates were "property," and they were both "owned and used" by the New Haven, and accordingly entitled to valuation. The Commission in its report did not deny that they were property, but it declined to ascertain and report their value, although expressly finding that they were "valuable" on the ground that they nevertheless were "trackage rights" and accordingly not entitled to be valued "for rate making purposes." As the Court of Appeals said:

> "The Commission in its report discloses complete non-action on the matter of the valuation of this property. It expressly finds that such valuation is not necessary for the purpose of establishing a rate base."

The legal nature of the New Haven's rights is not a question of general importance. It is an ordinary question of

real-property law which affects only this particular valuation, and does not need to be settled by this Court. The Commission says that its method of valuing "trackage rights" has been applied in over 1000 valuations, but it does not follow that any substantial number of carriers had, or claimed to have, estates or interests in the property itself so as to require revaluation of their properties.

At the date of the *Texas Midland Railroad* report, July 31, 1918, the Commission found its rule workable, because, as already pointed out, it did not know what use Congress proposed to make of the valuations. Up to that time the Commission had been concerned primarily with the making of rates, so it assumed that the valuations would certainly be available for use in rate making, and accordingly adopted the practice of designating its single sum valuations as the "value for rate making purposes." By the Transportation Act of February 28, 1920 (c. 91, 41 Stat. L. 456, *ff.*), however, Congress amended the Interstate Commerce Act by expressly providing that the valuations made under section 19a, the old Valuation Act, should be *prima facie* evidence, not only in rate making, but also in consolidation, section 5, and recapture, subdivisions (4) and (6) of section 15a, and by reason of being *prima facie* evidence of value in all other proceedings under the Act, they became of importance in the division of joint rates, subdivision (6) of section 15, and the issuance of securities, subdivision (2) of section 20a. The Commission was thus fully advised, within two years after the *Texas Midland Railroad* report, of the precise purposes for which the valuations were to be used. Whether or not a rule which assigns the entire value of a terminal to one carrier, although another carrier has a recognized property interest therein, is workable in establishing rates which as between the carriers as a whole or by groups and the public will yield a fair return on the aggregate property used in the service, it is fundamentally unworkable in consolidation, for example, where the rights of

each carrier as an owner of private property are involved. A valuation which omits part of the property of a carrier is necessarily inadequate for such a purpose, yet the Commission has deliberately continued to designate all its valuations as "value for rate making purposes" and, in so doing, to exclude from valuation everything falling within its own arbitrary definition of "trackage rights," announced at a time when it was dealing solely with rate making. Admittedly the question whether the Commission is authorized to report a "value for rate making purposes" involves the construction of a federal statute on a point of great importance in railroad valuations, but now that the Act makes that same valuation *prima facie* evidence in consolidation and other proceedings involving private ownership as between one carrier and another, it requires no decision by this Court to adjudicate the plain duty of the Commission to ascertain and report the value of a perpetual easement and a base fee in the heart of New York City, what the Commission itself has recognized as "valuable and essential to the operation of its property as a whole," a "valuable asset."

2. The valuation to the New Haven of its rights in the property will not result in duplication of values for rate making or other purposes.

The Commission contends that to value the contracts separately from the physical property would result in duplication and make the aggregate valuation greater than the value of the property. In this the Commission fails to distinguish between those contracts which create mere contractual rights and those which create estates in the property itself. The New Haven is not placing any academic interpretation on the word "property." It is not using it in the constitutional sense, which includes contracts, labor, and other individual rights. It is not asking the Commission to value as such the agreements of March 17, 1848, and

July 24, 1907. It is using "property" in the same sense as the Commission, namely, the tracks and the terminals; but those agreements created a property interest, an estate, an incorporeal hereditament, in the tracks and terminals themselves. The Harlem is not the sole owner of that property and neither the Harlem nor its lessee, the Central, is entitled to have the full value of that property included in its inventory. The ownership of the property is subject to the estates therein. The value of those estates should be deducted from the value of the tracks and terminals and assigned to the carrier. There would then be no duplication.

The Commission's difficulties in this respect again flow from its persistent adherence to its own arbitrary rule that "trackage rights," whether or not constituting an estate in property, are not entitled to valuation. When the rule was laid down the Commission understood that what Congress wanted was an inventory of all the railroad property in the country. To quote from its own report on the *Texas Midland Railroad:*

> "When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress, and the public will be informed with respect to every piece of property used in serving the public with the single exception of that insignificant portion which is privately owned and partially used by common carriers. . . . All the property used in serving the public will be inventoried and valued, and will be inventoried and valued once and only once."

The announced purpose was an inventory of the physical property, and accordingly the Commission inventoried each piece of physical property to some one carrier without attempting to assign that value to and among the several carriers who might have estates therein. In making its arbitrary selection of the carrier in whose inventory the piece of property should be valued the Commission adopted its rule

as to "trackage rights." But that rule, though roughly workable for making an inventory, became obviously obsolete after the several purposes to which the valuations were to be put were defined by Congress in the amendment of February 28, 1920. Naturally, if the Commission includes the entire value of a terminal in the inventory of one carrier and then values to other carriers their easements and other estates therein, the aggregate value in the rate base will be more than the total value of the terminal, but the duplication results from assigning to the first carrier the entire value of the terminal. To find the value of a piece of property subject to an easement, the value of the easement, if, as here, it has value, must first be deducted. This question of duplication presents for consideration only the most elementary principle of valuation, a principle which does not need to be settled by this Court.

The same may be said of the Commission's argument that the value of the New Haven's rights in the property should not be included in the rate base because the rentals paid for those rights are deductible in computing "net railway operating income" for the purpose of establishing rates which will yield a fair return. Subdivision (1) of section 15a provides that in computing "net railway operating income" there shall be included "debits and credits arising from equipment rents and joint facility rents." The New Haven has reported these rentals as "joint facility rents" because its accounts must conform to the uniform system prescribed by the Commission, but even if they are "joint facility rents," the Commission's point affects only the quantum of value to be placed on the New Haven's rights and in no way justifies a refusal to ascertain and report what that value is. If the rentals are deductible in determining net railway operating income, it may well be that the obligation to pay them should be capitalized and deducted in ascertaining the value of the New Haven's rights. This would be in accordance with the ordinary commercial method of valu-

ing a leasehold at the excess of the rental value of the property over the rent reserved in the lease. The right to run trains over the twelve-mile stretch from Woodlawn to Forty-third Street, affording an entrance into New York City, and the right to use the Grand Central Terminal and the South Station at the termini of what is one of the most important and intensively used passenger routes in the country, are of immense value, far in excess of the rentals which in the case of the terminals are simply a proportion of interest and the cost of maintenance. Instead of approaching this problem of valuation in the usual way the Commission has arbitrarily declined to undertake the task.

3. The decision of the Court of Appeals is not in conflict with its prior decision in Kansas City Southern Railway Company v. Interstate Commerce Commission, 6 Fed. (2d) 692, or with the decision of the Circuit Court of Appeals for the First Circuit, Boston Terminal Company v. Gill, 246 Fed. 664.

(*a*) One point presented to the Court of Appeals in *Kansas City Southern Railway Company* v. *Interstate Commerce Commission,* 6 Fed. (2d) 692, related to the alleged failure of the Commission to ascertain and report the value of the rights of certain railroads to use certain terminal railway properties under operating arrangements similar to those in the South Station, Boston, but the point there presented to the Court of Appeals was entirely different from the point presented here. The difference lay in the disposition which the Commission had made of the question. In both cases the petitioner sought a writ of mandamus to compel the Commission to ascertain and report the value of its rights in the terminal properties, but in that case the report of the Commission which was incorporated into the record showed that the Commission had acted on the subject by determining that the carrier did not own or

use those properties within the meaning of section 19a. For example, in respect of the elevator, the Commission said in its report, 75 I.C.C. 223, 235:

> "The property is neither owned nor used by the carrier and for this reason has no place in the carrier's valuation."

Accordingly the Court of Appeals rightly decided that, as the Commission had determined the legal status of the carrier's rights adversely to the carrier's contention, the report disclosed only an error of law, as distinguished from a breach of duty. Contrast the language in the report in that case with the following language in the report on the New Haven (Record, p. 67):

> "But for the purpose of ascertaining the value for rate making purposes of the carrier's property owned or used in common carrier service, no specific value will be reported for the right of the carrier to the use of this property."

In short, as the Court of Appeals said, the report "discloses complete non-action on the matter of the valuation of this property." The distinction between the two cases is the very distinction pointed out by this Court in *United States* v. *Los Angeles & Salt Lake Railroad Co.*, 273 U.S. 299, holding that errors of law made by the Commission cannot be corrected by a bill in equity under the Urgent Deficiencies Act or otherwise until the Commission attempts to make use of the final valuation in some proceeding, but that, as Congress has prescribed in detail the subjects on which findings should be made—

> "Every party in interest is therefore entitled to have and to use this evidence; and the carrier, being a party in interest, has the remedy by mandamus to compel the Commission to make a finding on each of the subjects

specifically prescribed. *Kansas City Southern Railway Company* v. *Interstate Commerce Commission,* 252 U. S. 178."

(*b*) The case of *Boston Terminal Company* v. *Gill,* 246 Fed. 664, involved the status of The Boston Terminal Company, which constructed the South Station, its capital stock being owned by the operating railroad companies and they being required by statute to use and pay for the maintenance of the property. The only question before the Court was whether the terminal company was "organized for profit" and "engaged in business" within the meaning of the Federal Excise Tax on Corporations. The Court held that the corporation was subject to the tax, but nothing in the decision affected the question as to whether the right and statutory obligation of the railroad companies to use the terminal created estates in the property itself. In fact, the opinion of the District Judge, which was approved by the Circuit Court of Appeals, pointed out that, although the statute required the terminal company to pay a franchise tax on its capital stock, the same statute provided that the real estate should be assessed for taxation directly to the operating railroad companies which should be deemed to be the owners thereof. That decision, if anything, supports the decision of the Court of Appeals now under consideration, in holding that—

> "The property rights of the New Haven to be valued by the Commission are not measured by the capital stock it holds in the terminal company but by the ownership and perpetual right of use it has acquired in the terminal tracks and station."

B.

THE CASE DOES NOT INVOLVE AN ERROR OF LAW IN THE CONSTRUCTION OF THE STATUTE, BUT A BREACH OF AN EXPLICIT DUTY IMPOSED ON THE COMMISSION BY THE STATUTE.

1. The decision of this Court in Kansas City Southern Railway Co. v. Interstate Commerce Commission, 252 U.S. 178, was rightly held by the Court of Appeals to be decisive of this case on the question of the remedy.

The Commission contends that in ascertaining and reporting the value of the New Haven's property it necessarily had to interpret the phrase "property owned or used," and that the exercise of its judgment and discretion in this respect could result only in an error of law as distinguished from a breach of duty. It endeavors to distinguish the decision of this Court in *Kansas City Southern Railway Co.* v. *Interstate Commerce Commission,* 252 U.S. 178. In that case, after the Commission had completed its tentative valuation, the carrier filed a protest on the ground that the Commission had failed to include "the present cost of condemnation and damages or of purchase in excess of such original cost and present value," in spite of the mandate in subdivision (*b*), second, of section 19a, directing the Commission to determine those items. The Commission assigned, as the reason for its failure to report the value of those items, the practical impossibility of ascertaining it. This Court, reversing the decisions of the Supreme Court and Court of Appeals of the District of Columbia, ordered a writ of mandamus directing the Commission to perform its statutory duty in this respect. The Court said, at page 187:

> "It is obvious from the statement we have made, as well as from the character of the remedy involved, that we are required to decide not a controversy growing out of duty performed under the statute but one solely involving an alleged refusal to discharge duties which

the statute exacts. Admonishing as this does, that the issue before us is confined to a consideration of the face of the statute and the non-action of the Commission in a matter purely ministerial, it serves also to furnish a ready solution to the question to be decided, since it brings out in bold contrast the direct and express command of the statute to the Commission, to act concerning the subject in hand, and the Commission's unequivocal refusal to obey such command.

. . . . . .

"Finally, even if it were further conceded that the subject matter of the valuation in question which the act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the act of Congress, or what is equivalent thereto, of exerting the general power which the act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise."

That case is identical in principle with this case. There the Commission sought to justify its failure to report the condemnation value of the carrier's property on the ground that it was a practical impossibility to ascertain it. Here, likewise, the Commission seeks to justify its failure to report the value of an important part of the carrier's property because of the inherent practical difficulties in ascertaining the value of "trackage rights." The Commission points to the absence of any express mention of "trackage rights" in the statute as leaving the determination of their treatment to the discretion of the Commission, but subdivision (a) of section 19a plainly directs the Commission to ascertain and report the value of "all the property owned or used" by every carrier and, in addition, subdivision (b), second, re-

way Co., 163 U.S. 564, but the Court of Appeals rightly held that that decision is not applicable to this case. It is in the language of the opinion in that case that the Commission purports to find its authority for classifying rights of the type involved in this case as "trackage rights." The Union Pacific Railway Company granted to four other railroad companies the right to use certain tracks of the former. The contracts were similar in form, so the Court dealt with the contract with the Chicago, Rock Island and Pacific Railway Company. The Pacific Company "lets the Rock Island Company into the full, equal and joint possession and use of its main and passing tracks" between certain points for 999 years. "Schedules of rules and regulations" for the movements of trains were to be made by officers of the lessor and lessee, subject to the decision of referees in case of disagreement, but "all trains" were to be "moved under the immediate direction of the superintendent or other officer of the lessor company." The Pacific Company might admit any other company to the joint use and possession of the same tracks provided such additional burden did not interfere with the Rock Island Company. Following a change in management of the Pacific Company it repudiated the contract and undertook forcibly to prevent the Rock Island Company from using the tracks. Thereupon the Rock Island Company brought a bill in equity for specific performance of the contract and the Pacific Company answered that the contract was *ultra vires* because as a federal corporation it had no power to disable itself by contract from the full performance of its public duties. The Court did refer to the contracts as an arrangement for "trackage rights," but the question of the legal status of the rights of the Rock Island Company was purely incidental to the real question of whether the contracts involved such a surrender of its franchise by a federal corporation as to be *ultra vires*. The substance of the decision was that the Pacific Company had not so surrendered the possession and control of its tracks

to the Rock Island Company as to disable it from performing its public franchise duties.

As to the incidental interpretation of the contract, the decision turned on the point that when the trains of the Rock Island Company came onto the tracks they were "moved under the direction of an officer of the Pacific Company," a point which sharply distinguishes that case from this, for when the trains of the New Haven come onto the tracks from Woodlawn to Forty-third Street they are not moved under the direction of an officer of the Harlem or of the Central, and, as the Court of Appeals pointed out, the rights of the New Haven are not subordinate to, but coextensive with, those of the Harlem, for the New Haven may absorb the use of the entire tracks with certain exceptions as to express trains.

This Court is not concerned primarily with questions of real-property law. The significance of that decision as a judicial determination by this Court lay, not in its interpretation of the property rights created in the Rock Island Company by the contract, but in its construction of the corporate powers of the Pacific Company under its federal charter. The Court was not undertaking to define "trackage rights," either generally or with precision, and used the expression, not as legally descriptive of any particular form of contract, but as practically descriptive of the type of business arrangement under consideration. The expression "trackage rights" is obviously not a legal definition, but merely descriptive phraseology to which the Commission has undertaken to give legal significance. Even if the Court had established "trackage rights" as a legal definition, the decision involved only a question of real-property law, not a question of general importance, nor involving the construction or application of a federal statute. It is not a question which, standing by itself, would merit review by this Court on certiorari.

Conclusion.

In conclusion the attention of the Court is invited to the precise nature of this proceeding. A casual reading of the Commission's answer to the mandamus petition might suggest that the Court of Appeals has undertaken to decide in favor of the New Haven a question which the Commission had decided adversely. That is not the situation. The Commission does allege in its answer that the New Haven has no property interest in the tracks and terminals, only a license to use them. But it is in the answer that that contention first appears. The question was presented to the Commission for decision in the valuation proceedings, but the Commission did not decide the question, stating in its report that it was unnecessary to do so. In that respect the report is incomplete and the Commission cannot complete its incomplete report by its answer in court. It is the report of the Commission, not the decision of the Court, which is made *prima facie* evidence in rate making, consolidation, recapture, division of joint rates, and the issuance of securities. That is why the Commission's claim that the New Haven is using mandamus as an indirect means of reviewing the valuation is without foundation. It is an absence of decision, not an error in decision, of which the New Haven complains.

In *Kansas City Southern Railway Co.* v. *Interstate Commerce Commission*, 6 Fed. (2d) 692, discussed above under Part B (1), the Kansas City Southern Railway Company sought similar relief by mandamus because of the failure of the Commission to ascertain and report the value of its rights in certain terminal properties, but there the Commission in its report had decided the nature of the carrier's rights adversely to the carrier's contention, whether erroneously or not, and accordingly the Court of Appeals declined to grant the writ. Measured solely by the pecuniary value of the rights involved, the great Kansas City terminal

properties, that case was comparable in importance to this case, yet this Court denied certiorari in 269 U.S. 570. In that case the Court of Appeals declined to grant the writ because the Commission had already decided the question; in this case they granted the writ because the Commission had not decided the question. It is respectfully suggested that the reasons for a review by certiorari advanced by the Commission in this case present no more cogent appeal to the sound judicial discretion of this Court than did the reasons advanced by the carrier in that case.

Respectfully submitted,

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CHARLES ELMORE CROPLEY

In the

Supreme Court of the United States

October Term, 1931

No. 15

Interstate Commerce Commission
Petitioner

v.

The New York, New Haven and Hartford Railroad Company, Old Colony Railroad Company, Boston and Providence Railroad Corporation (Massachusetts), Boston and Providence Railroad Corporation (Rhode Island), Providence, Warren and Bristol Railroad Company, Harlem River and Port Chester Railroad Company, Holyoke and Westfield Railroad Company, Providence and Worcester Railroad Company, Chatham Railroad Company, and Norwich and Worcester Railroad Company,
Respondents

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In the

Supreme Court of the United States.

OCTOBER TERM, 1931

No. 773

INTERSTATE COMMERCE COMMISSION,

PETITIONER

v.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, OLD COLONY RAILROAD COMPANY, BOSTON AND PROVIDENCE RAILROAD CORPORATION (MASSACHUSETTS), BOSTON AND PROVIDENCE RAILROAD CORPORATION (RHODE ISLAND), PROVIDENCE, WARREN AND BRISTOL RAILROAD COMPANY, HARLEM RIVER AND PORT CHESTER RAILROAD COMPANY, HOLYOKE AND WESTFIELD RAILROAD COMPANY, PROVIDENCE AND WORCESTER RAILROAD COMPANY, CHATHAM RAILROAD COMPANY AND NORWICH AND WORCESTER RAILROAD COMPANY,

RESPONDENTS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENTS

Reference to Opinions Delivered in the Courts Below and Statement of Grounds on Which the Jurisdiction of this Court is Invoked

On April 18, 1932 this Court granted a petition by the Interstate Commerce Commission for a writ of certiorari to

review a judgment of the Court of Appeals of the District of Columbia entered on January 18, 1932 reversing a judgment of the Supreme Court of the District of Columbia entered on April 3, 1931 dismissing a petition by The New York, New Haven and Hartford Railroad Company and other controlled or leased railroad companies together owning an interstate railroad line located in New York, Connecticut, Rhode Island and Massachusetts filed on July 3, 1930 for a writ of mandamus to compel the Commission in making its final valuation of the property owned or used by those railroad companies to investigate, ascertain and report the value of their rights in the passenger terminal known as the Grand Central Terminal in New York City and the approaching tracks from Woodlawn to Forty-third Street and in the passenger terminal known as the South Station in Boston.

The memorandum opinion of the Supreme Court of the District of Columbia is unreported, but appears on pages 434-449 of the record. The opinion of the Court of Appeals of the District of Columbia is reported in 60 App. D. C. 403 and 55 Fed. (2nd) 1028 and appears on pages 641-655 of the record. The Report of the Commission on the final valuation of the property is reported in I. C. C. Val. Rep. Vol. 30, 1 and appears on pages 24-388 of the record.

Jurisdiction is invoked under subsection (a) of Section 240 of the Judicial Code as amended and reenacted by Act of February 13, 1925 (c. 229, 43 Stat. 936, 938).

Statement of the Case

The Proceedings before the Commission

By Act of Congress on March 1, 1913 commonly known as the Valuation Act, which appears as Section 19a of the Interstate Commerce Act, the Interstate Commerce Commission (hereinafter referred to as the Commission) was directed to investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the

provisions of the Act. Shortly thereafter the Commission entered upon an investigation, known as Valuation Docket No. 311, to ascertain the value as of June 30, 1915, of the property owned or used by the respondent railroad companies, all of which are controlled by or leased to The New York, New Haven and Hartford Railroad Company and together own an interstate railroad line through New York, Connecticut, Rhode Island, and Massachusetts operated as the New York, New Haven and Hartford system (hereinafter sometimes collectively referred to as the Carrier). On or about December 2, 1922, the Commission, having completed its investigation, published and served upon the Carrier a copy of its tentative valuation. The Carrier duly filed its protest against the failure of the Commission to ascertain and report the value of its rights in the tracks of the New York and Harlem Railroad Company (hereinafter referred to as the Harlem) from Woodlawn to Forty-third Street and in the passenger terminal known as the Grand Central Terminal in New York City and in the passenger terminal known as the South Station in Boston. Hearings on the protest were held before an examiner of the Commission at which testimony and documentary evidence was introduced by the Carrier in support of its protest. The issues were submitted to the Commission on May 18, 1926.

The Property Rights in Issue

The following is a brief history of the Carrier's rights in the tracks and terminals in question, according to the undisputed documentary evidence as set forth in narrative form in the respondents' bill of exceptions before the Court of Appeals of the District of Columbia (Record, p. 455 ff.).

1. The New York and Harlem Railroad Company was incorporated by the legislature of New York in 1831 and constructed its railroad from White Plains to New York City. The New York and New Haven Railroad Company,

predecessor of The New York, New Haven and Hartford Railroad Company, was incorporated by the legislature of Connecticut in 1844, under a perpetual charter (Exhibit 2, Record, p. 495). After constructing its railroad from New Haven to the New York state line it applied to the New York legislature for authority to extend its railroad into New York City, but the authority was not granted (Record, pp. 457, 458). Thereafter, as a result of negotiations between the Harlem and the New Haven they entered into an agreement dated March 17, 1848, whereby the Harlem granted to the New Haven the right to run its trains over the Harlem's tracks into New York City in accordance with operating arrangements determined by the officers of both companies (Record, p. 460, and Exhibit 7, Record, p. 520). These rights were granted in perpetuity because the agreement was to continue in force "during the terms of their charters respectively and for all renewals thereof." Twelve days later the legislature of New York, by act of March 29, 1848, amended the Harlem's charter by authorizing the New Haven to run its trains over the Harlem's tracks upon such terms as had been or might be agreed upon by and between the two companies, a copy of the agreement to be authenticated and filed in the office of the secretary of state (Record, p. 462, and Exhibit 8, Record p. 529). The above-mentioned agreement was duly authenticated and filed in the office of the secretary of state, as provided in the act (Record, p. 463). The New Haven has enjoyed and exercised the rights so granted from that day to this. On April 1, 1873, the Harlem leased its railroad to the New York Central and Hudson River Railroad Company (hereinafter referred to as the Central) for a term of four hundred and one years, but by paragraph Ninth the lease was made expressly subject to the rights of the New Haven under the agreement (Record, p. 465, and Exhibit 11, Record, p. 559). The Carrier claimed that under the agreement it had a perpetual easement in the railroad of the Harlem from

Woodlawn to Forty-third Street, and that, by virtue of the statute subjecting the Harlem's charter to the dominant rights of the New Haven upon the authentication and filing of the agreement in conformity therewith, the easement acquired the added advantages of a franchise.

2. The original terminal of the Harlem at Canal Street was moved north to Twenty-seventh Street in 1857, and further north to Forty-second Street in 1872. On November 1, 1872, the Harlem, the Central and the New Haven entered into a tripartite lease whereby the Harlem was to construct the original Grand Central Depot at Forty-second Street and lease it to the Central and the New Haven for the joint use and occupancy of all three companies (Record, p. 464). Following the passage of an Act of May 7, 1903, requiring the substitution of electricity for steam as a method of operation in Park Avenue, the three railroad companies entered into a further agreement dated July 24, 1907, providing for the construction of the present Grand Central Terminal and its approaches as far north as Fifty-ninth Street (Record, p. 470, and Exhibit 13, Record, p. 593). By paragraph 3 of the agreement the Central acting for itself and the Harlem demised, let and leased to the New Haven the use, in common with the Central, of the terminal, provided the use should not exceed 50% of its maximum capacity, and as compensation for the premises thereby demised the New Haven was to pay interest on the cost of construction and a proportion of the annual expenses for maintenance and operation. Paragraph 12 provided that the terminal should be under the sole charge and direction of a terminal manager appointed by the presidents of the Central and the New Haven and removable at any time upon written notice by either of them. Paragraph 25 provided that the covenants and agreements should remain in force during the term of the demise which by paragraph 3 was to continue "during the term of the New Haven Company's charter and all renewals thereof," and therefore in perpetuity. The

Carrier claimed that this agreement gave it the perpetual possession and enjoyment of one undivided half of the terminal property, and that, as the agreement could be terminated only for non-payment of rent or upon the termination of its charter, neither of which events was within the control of the Harlem or the Central, it had an estate in base fee.

3. By act of June 9, 1896, the legislature of Massachusetts incorporated The Boston Terminal Company with power to construct and maintain a union passenger station for the five railroad companies mentioned in the act, including four of the respondents herein, each of which was authorized to subscribe for 20% of its capital stock (Record, p. 477, and Exhibit 16, Record, p. 615). Section 9 required all the railroad companies to use the station when completed instead of their existing terminals and invested the Supreme Judicial Court with jurisdiction to enforce that provision. The act directed the railroad companies to pay to the terminal company the amounts necessary to pay the expenses of its corporate administration and of the maintenance and operation of the station, interest on its bonds, and a dividend of 4% on its capital stock, all in proportion to their respective use of the property. Section 25 provided that the terminal company should pay a franchise tax to Massachusetts upon its capital stock, but that its real estate required by the act to be used by the railroad companies should be assessed to the railroad companies each of which should be deemed an "owner" of the real estate in proportion to its use thereof. At the time of the valuation investigation the proportion of use as between the New Haven affiliates and the Central, as lessee of the Boston and Albany Railroad, was 75% by the former and 25% by the latter. The Carrier claimed that its statutory right and obligation to use the terminal property, together with the other provisions of the act, gave it a perpetual easement therein.

The Final Valuation.

In its evidence before the Commission the Carrier placed on its property rights in the tracks from Woodlawn to Forty-third Street and in the Grand Central Terminal a value of $55,490,531 and on its property rights in The Boston Terminal Company property a value of $17,802,000. (Record, pp. 61 and 67.) The exercise of its rights in these properties is necessary in the Carrier's operations, it could not abandon those operations without the approval of the Commission and its tariffs on file with the Commission cover operations over those properties. On or about January 14, 1930, the Commission made public and served on the Carrier its report and order dated November 13, 1929, purporting to fix the final valuation of its property. The portions of the report relating to the tracks and terminals in question appeared under the headings "Terminal Property at New York City" and "The Boston Terminal Company" (Record, pp. 60, 67). Although the Commission found the rights of the Carrier in the tracks and terminals to be "valuable and essential to the operation of its property as a whole," "a valuable asset," it refused to ascertain and report any value for those rights, on the ground that they were not entitled to be valued "for rate-making purposes." As to the tracks from Woodlawn to Forty-third Street, the report stated (Record, p. 64):

> "In our finding of value of the property owned or used in common carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right. We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole. Nevertheless, for

> the purpose of finding a rate base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers."

As to the joint use of the Grand Central Terminal, it stated (Record, p. 66):

> "The right to use these extensive terminal facilities is a commercially valuable contract right owned by the carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value, for rate-making purposes, of the carrier's property owned or used in common carrier service, no specific value will be reported for the right of the carrier to the use of this property."

The Proceedings in Court

On July 3, 1930, the Carrier filed in the Supreme Court of the District of Columbia its petition for a writ of mandamus directing the Commission, in the performance of its statutory duty, to ascertain and report the value of its rights in the tracks and terminals in question. The Commission answered that it had ascertained the value of the physical property, but not of the incorporeal rights of the Carrier therein, and had reported the entire value of the tracks from Woodlawn to Forty-third Street and of the Grand Central Terminal in the inventory of the Central, as exclusive operating lessee of the Harlem, and the entire value of the South Station in the inventory of The Boston Terminal Company. The pleadings and evidence showed that the action of the Commission in confining itself to the valuation of the physical property was in accordance with a rule which it had adopted for its own convenience and administration. The report on the valuation of the Carrier made express reference to Appendix 3 of its report on *Texas Midland Railroad,* 75 I. C. C. 1, for a statement of

the methods of valuation employed (Record, p. 127). The applicable extracts from Appendix 3 were annexed to the petition, and laid down the broad rule that, where one carrier had a joint right to use property of another carrier, the physical property would be valued as a whole to the latter, or to its exclusive operating lessee, and that no part of the value of the property would be assigned to the right of the first carrier to use it.

The case was heard before Mr. Chief Justice Wheat of the Supreme Court of the District of Columbia on February 12, 1931. On April 1, 1931, he handed down a "Memorandum Opinion," concluding that the Commission did not err in declining to value the New Haven's rights (Record, p. 434). His conclusion was based upon the practical difficulties inherent in undertaking to place a value on the many and varying rights of one carrier to use the property of another and that the Carrier's rights were no different in kind from the ordinary trackage and terminal rights resulting from contract arrangements between carriers. On April 3, 1931 judgment was entered dismissing the petition and the Carrier noted an appeal.

The appeal was argued before the Court of Appeals of the District of Columbia which, on January 18, 1932, handed down its unanimous opinion written by Associate Justice Van Orsdel reversing the judgment of the Supreme Court of the District of Columbia and ordering a writ of mandamus in accordance with the petition (Record, p. 641). The court decided that under the agreement of March 17, 1848, the New Haven had a perpetual easement in the railroad of the Harlem and that the act of March 29, 1848, amending the Harlem's charter, subjected the Harlem's railroad to a dominant servitude in favor of the New Haven constituting a perpetual franchise; that under the agreement of July 24, 1907, the New Haven had a base fee in an undivided half of the Grand Central Terminal; and that under the act of June 9, 1896, the New Haven acquired an

ownership and perpetual right of use in the property of The Boston Terminal Company; that all of the foregoing rights were "property" owned and used by the Carrier and accordingly entitled to valuation under Section 19a; that the Commission had no power to limit its valuation to a value "for rate-making purposes" or in so doing to exclude such rights from valuation; and that the failure of the Commission to ascertain and report the value of those rights was a breach of duty for which mandamus was the proper remedy.

The Commission filed in this Court on March 7, 1932 a petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia and certiorari was granted on April 18, 1932.

Statutes

The relevant parts of the Valuation Act of March 1, 1913, (c. 92, 37 Stat. 701), being Section 19a of the Interstate Commerce Act, as amended in certain respects on June 7, 1922 (c. 210, 42 Stat. 624) and of Section 15a, added to the Interstate Commerce Act by the Transportation Act of February 28, 1920 (c. 91, 41 Stat. 456, 488), are set out in an appendix to this brief.

Summary of Argument

I

The Carrier acquired a perpetual easement in the railroad of the Harlem from Woodlawn to Forty-third Street under the agreement of March 17, 1848, the agreement creating more than a mere license or so-called "trackage right". The agreement took on the added advantages of a franchise when the legislature of New York by the act of March 29, 1848 amended the Harlem's charter by subjecting it to the obligation of the agreement as a dominant servitude.

The perpetual right to use one undivided half of the Grand Central Terminal which the Carrier acquired by the lease of July 24, 1907 was an estate in the property, a base fee in an undivided half thereof, a joint ownership with the Harlem.

By the act of June 9, 1896 the legislature of Massachusetts authorized and required the Carrier and other railroad companies to give up their existing terminals and use the property conveyed to The Boston Terminal Company as a union station, authorized the courts to compel such use and provided that for certain purposes the railroad companies should be deemed the "owners" of the property, thus creating in the Carrier a perpetual easement in the terminal property instead of leaving it a mere stockholder in the terminal company.

The Carrier's rights in the tracks from Woodlawn to Forty-third Street, acquired in 1848, were prior in time and superior in interest to the rights of the Central under its lease of the Harlem's railroad in 1873, and those rights as well as the Carrier's rights in the Grand Central Terminal, both being perpetual estates in the respective properties, will continue after the Central's lease, limited to 401 years, has terminated. Nevertheless the Commission has included the entire value of those properties in the Central's inventory.

II

In so doing the Commission followed the rule it adopted in the *Texas Midland Railroad* valuation, reported on July 31, 1918, that no value will be assigned to the right of one carrier to use property of another carrier irrespective of whether the right of use constitutes a legal estate in the property itself. Congress not having specified in the Valuation Act of March 1, 1913, being Section 19a of the Interstate Commerce Act, the purpose for which the valuations were to be used, the Commission assumed that an inventory of all

entitled to valuation under Section 19a as "property owned or used" by the Carrier. In its Report under the headings "Terminal Property at New York City" (Record, p. 60) and "The Boston Terminal Company" (Record, p. 67) the Commission reviewed the history of the Carrier's rights, but made no finding as to whether they constituted estates in the property or not. The Commission's position was that they were making a valuation "for rate-making purposes" and no value should be assigned to the rights of one carrier to use property of another carrier whatever be the legal status of those rights. The Commission expressly stated:

> "It is therefore unnecessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right."

In the Supreme Court and Court of Appeals of the District of Columbia, however, the Commission for the first time took the position that the Carrier's rights in the tracks and terminals were mere contracts and did not constitute estates in the property. This is a proceeding to compel the Commission to determine the value of those rights as part of the "property owned or used" by the Carrier so that while this Court is not primarily concerned with the precise legal status of the rights involved it is incumbent on the Carrier to satisfy the Court that upon the undisputed documentary evidence the Carrier has important property rights which warrant the exercise of the Court's discretion to order them to be valued.

A. *The title of the Carrier in the tracks from Woodlawn to Forty-third Street*

The New York and Harlem Railroad Company was incorporated by the legislature of New York in 1831 and constructed its railroad from White Plains into New York

City. The New York and New Haven Railroad Company, the predecessor of the New York, New Haven and Hartford Railroad Company, was incorporated by the legislature of Connecticut on June 7, 1844 under a charter which was unlimited in duration. It was thereby empowered to construct its railroad from New Haven to the New York state line. It subsequently applied to the New York legislature for authority to extend its railroad from the state line into New York City, but the authority was not granted. Following earlier negotiations the two companies eventually entered into an agreement dated January 22, 1846 and later in the same year the legislature of New York authorized the New Haven to connect its railroad with that of the Harlem at William's Bridge near Woodlawn, the present connection, and the legislature of Connecticut authorized the New Haven to accept the grant. (Record, pp. 457-458.)

Thereafter the two railroads entered into a substitute agreement dated March 17, 1848 whereby in the following language the Harlem granted to the New Haven the right to run its trains over the Harlem's tracks into New York City.

> "*Fourth.* It is mutually understood and agreed that when and as soon as the New York and New Haven Railroad Company shall have completed their road from the point of junction to Byram River, they shall have the right to run their trains, engines, and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlem Railroad Company from the point of junction aforesaid to and into the city of New York and as far over the same in the said City as the said Company's road shall extend, not however below the intersection of said Railroad and Pearl Street in said City,—the said New York and New Haven Company furnishing their own haulage." (Record, p. 460.)

These rights were granted in perpetuity because the new agreement was to continue in force "during the terms of their charters respectively and for all renewals thereof," the charter of the New Haven from the State of Connecticut was of unlimited duration, (Exhibit 2, Record, p. 495), and under the law of New York, where the agreement was to be performed, a charter or franchise for an indefinite term is perpetual. *People* v. *O'Brien,* 111 N. Y. 1. Twelve days later the legislature of New York by act of March 29, 1848 amended the Harlem's charter in the following language:

> "The New York and New Haven railroad company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business, over the road of the New York and Harlem railroad company, from the point of junction of the roads of said companies at or near William's Bridge, in the county of Westchester, to the City of New York, and as far into the said city as the said Harlem railroad may extend, upon such terms and to such point as has been or may hereafter be agreed upon by and between said companies; a copy of such agreement or agreements to be duly authenticated and filed in the office of the secretary of state of this state; and to take, transport, and convey persons and property upon the said Harlem Railroad, by the power and force of steam or animals or any mechanical power or combination of the same." (Record p. 462.)

and the new agreement was duly authenticated and filed in the office of the secretary of state as provided in the act. (Record, p. 463.) The Harlem's charter was thus subjected to the dominant rights so granted to the New Haven.

The New Haven and its successors have enjoyed and exercised the rights so granted from that day to this. The subsequent indenture of April 1, 1873 whereby the Harlem leased its railroad property to the Central for a term of

401 years was made expressly subject to the rights of the New Haven under the agreement. (Record, p. 465.) In the later negotiations resulting in the agreement of July 24, 1907 under which the Grand Central Terminal was constructed those rights were considered of such importance by the committees representing the New Haven and the Central, as Mr. Buckland testified, that the New Haven was able to dictate various changes in the plans submitted by the Central and to obtain the perpetual use of one-half of its maximum capacity at a rental based on a proportion of the interest and maintenance charges without paying any part of the cost of construction. (Record, pp. 469 and 475.)

The rights of the New Haven under the agreement of March 17, 1848 had all the characteristics of a perpetual easement in the railroad of the Harlem from the connection at Woodlawn to Forty-third Street. The easement moreover acquired the added advantages of a franchise by virtue of the authentication and filing of the agreement in conformity with the grant of power conferred by the New York legislature amending the charter of the Harlem. The latter's railroad was subjected to a right of way, a dominant tenement recognized by the law as an estate in property.

1. The nature of the interest acquired by the New Haven under the agreement and statute was in issue before the Commission in the valuation proceedings, but instead of performing its duty in that respect the Commission avoided the issue by saying that in finding a value "for rate-making purposes" it was "not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right." The Commission now comes before the Court with the contention that the New Haven acquired a mere license or what the Commission is pleased to call a "trackage right." The issue cannot be disposed of by any such generalization. Some "trackage rights" are property, some are

not. If they constitute an easement, as these rights do, they are property. As the court said in *United States* v. *Welch*, 217 U.S. 333 at p. 339:

> "A private right of way is an easement and is land. . . . The same reasoning that allows a recovery for the taking of land by permanent occupation allows it for a right of way taken in the same manner, and the value of the easement cannot be ascertained without reference to the dominant estate to which it was attached."

2. The agreement created an easement, not a mere license. The distinction, according to the law of New York, the place where this agreement was to be performed, is laid down in *Saratoga State Water Corporation* v. *Pratt*, 227 N. Y. 429 at pp. 442, 443:

> "The rights granted the plaintiff were not revocable by and at the will of the state or its representatives. Those rights invested the plaintiff with an interest of some character in the lands of the reservation. This much is manifest. A license is revocable and carries no interest in the land in or over which it is to be enjoyed. It may become irrevocable through the expenditure of money by the licensee and, when executed, will prevent the owner of the land from maintaining an action of trespass for the acts done under it. The rights of the plaintiff here were not temporary, were not revocable and were not devoid of an interest in the land. . . . Incorporeal real property is defined to be a right issuing out of or annexed to a thing corporeal, and consists of the right to have some part only of the produce or benefit of the corporeal property, or to exercise a right or have an easement or privilege or advantage over or out of it."

By paragraph Fourth of the agreement the New Haven acquired the right to operate its trains over the tracks of the Harlem forever. The compensation provided for in paragraph Sixth was "for the use and occupation of their track or tracks aforesaid." The extent of the use and occupation was unlimited in space except that by paragraph Fifth the express trains of either party were given preference over the local trains of the other party. It was unlimited in time for by paragraph Fourteenth the agreement was to continue in force "during the terms of their charters respectively" and the term of the New Haven's charter was unlimited. (Exhibit 7, Record, p. 520.) The New Haven trains were to be operated by and under the control of its own employes and the New Haven was given equal control over the mode of operation for by paragraph Fifth it was to be "adjusted from time to time by the said companies or such officers as they may respectively appoint or designate to make such arrangements for running their several trains". The agreement could not have been a license for it was not revocable by either party.

The Commission contends that the New Haven does not pay for an estate, but only for the use of the tracks and that as it was under no obligation to use the tracks it was not required to pay anything. The merit of this argument lies solely in the ingenious way it is stated. An easement or lease is none the less an estate in property because the rent is based on some contingency such as the extent of the use. A common form of rent especially in mining leases is a royalty based on output. In dealing with another great railroad working out plans for a permanent entrance into New York City the Harlem may well have considered it unnecessary to ask for any minimum guaranty and the continued use of those tracks during the ensuing eighty years reflects credit on the Harlem's judgment. In any event, whether or not the New Haven was obligated to use the tracks in no way qualifies its right to use them.

The agreement is on all fours with one which this Court has held to be an easement. In *Joy* v. *St. Louis*, 138 U. S. 1, two railroad companies and the park commissioners of St. Louis entered into an agreement whereby the former acquired a right of way through a park. That agreement provided in paragraph Ninth:

> "Said party of the second part (one of the railroad companies) shall permit, under such reasonable regulations and terms as may be agreed upon, other railroads to use its right of way through the park and up to the terminus of its road in the City of St. Louis upon such terms and for such fair and equitable compensation to be paid to it therefor as may be agreed upon by such companies."

The property was sold at foreclosure and thereafter another railroad company applied for permission to use the right of way. The question was whether the agreement created a mere personal obligation on the part of the two railroad companies which would have been destroyed by the foreclosure sale or an estate in the property to which the sale would have been subject. In holding that it was an estate in the property the Court said at p. 38:

> "The covenant in paragraph 9 of the tripartite agreement created an easement in the property of the County company and the Kansas City Company for the benefit of the public, which might be availed of, with the consent of the public authorities, properly expressed, by other railroad companies which might wish to use not only the right of way through the park but also that between the park and the Union Depot."

and further at p. 39:

> "That agreement created the easement before referred to, which covered the tracks through the park and the tracks east of the park to the Union Depot."

In *Louisville & Nashville Railroad Company* v. *Chesapeake & Ohio Railroad Company*, 107 Ky. 191, the Louisville & Nashville Railroad Company entered into a written agreement with certain other railroad companies granting them the right for 100 years to use in common with it a certain part of its right of way at a monthly rental based on a proportion of the maintenance charges on a wheelage basis, each company operating its own trains. The court said at p. 196:

> "For all practical purposes, this contract may be regarded as one by which the Louisville & Nashville Company sold to the second parties a joint interest in its roadway . . . the latter paying, in lieu of purchase price, a rental equal to one-half of the interest at six per cent. per annum on the value of the entire track, bridges, structures, etc. . . . But, whether we look at the transaction in this way or not, the second parties did become the joint owners of the use of the road for the term of 100 years."

The Commission relies for its proposition that the agreement created merely "trackage rights", whatever legal significance that expression may have, on the authority of *Union Pacific Railway Company* v. *Chicago, Rock Island and Pacific Railway Company*, 163 U. S. 564, but that case is readily distinguishable. The Union Pacific Railway Company granted to four other railroad companies the right to use certain tracks of the former. The contracts were similar in form so the court dealt with the contract with the Chicago, Rock Island and Pacific Railway Company. The Pacific Company "lets the Rock Island Company into the full, equal and joint possession and use of its main and passing tracks" between certain points for 999 years. "Schedules of rules and regulations" for the movements of trains were to be made by officers of the lessor and lessee subject to the decision of referees in case of disagreement,

but "all trains" were to be "moved under the immediate direction of the superintendent or other officer of the lessor company". The Pacific Company might admit any other company to the joint use and possession of the same tracks provided such additional burden did not interfere with the Rock Island Company. Following a change in management of the Pacific Company it repudiated the contract and undertook forcibly to prevent the Rock Island Company from using the tracks. Thereupon the Rock Island Company brought a bill in equity for specific performance of the contract and the Pacific Company answered that the contract was ultra vires because as a railroad corporation it had no power to disable itself by contract from the full performance of its public duties.

In upholding the contract the court relied primarily upon the provision for operating the trains under the direction of an officer of the lessor, saying at page 582:

> "The contract provided that the Pacific Company hereby 'lets the Rock Island Company into the full, equal and joint possession and use of its main and passing tracks.' The possession here spoken of was such possession as the Rock Island Company would have when its engines, cars and trains were running over the tracks. The company had no possession before its trains came on the tracks or after they had run off of them, and while its trains were on the tracks its possession was only of the particular part occupied temporarily while running over them. *Moreover, all trains were to be moved under the direction of an officer of the Pacific Company. The Rock Island trains coming upon a Pacific track immediately passed from the control of the Rock Island Company into that of the Pacific, and its officials were subjected to the orders of the Pacific's officers.* And throughout the whole contract there does not appear to be a single provision

> which looks to any actual possession by the Rock Island of any of the Pacific property beyond that which was involved in its trains being run over the tracks under the direction of the other company. The contract in this regard was really an agreement for trackage rights, for running arrangements, a 'terminal contract' with compensation on a 'mileage' or 'wheelage basis,' rather than a lease." (Italics ours.)

In that vital respect the contract differed from the New Haven-Harlem agreement of March 17, 1848. When the New Haven's trains come on the tracks at Woodlawn they do not pass into the control of the Harlem or of its present lessee, the Central. They are operated and controlled by the New Haven in accordance with such operating arrangements as may be determined by the officers of both companies under paragraph Fifth. Moreover the "second line of rails" was to be constructed by the Harlem "in a manner approved by the chief engineers of both roads". Thus the New Haven was given a limited control over both the property and its operation. The possession of the New Haven, unlike that of the Rock Island, is not subordinate to, but rather coextensive with, that of the Harlem for each may absorb the use of the entire tracks subject only to the preference awarded the express trains of each over the local trains of the other.

The *Union Pacific* case presented the property question only incidentally. The court was dealing with the broad question of whether the contract as a whole was one which involved a surrender of the exercise of its franchises by a railroad corporation enjoying grants from the federal government rather than any technical question of property rights. That the decision turned on the point that the Pacific Company controlled the operation of the trains is manifest from the dissenting opinion of Mr. Justice Shiras for he considered the contract ultra vires because he differed

from the majority in his interpretation of the provision that the trains should be "moved under the direction of an officer of the Pacific Company," his view being that those directions had to be in accordance with the schedules adopted by the officers of both companies, just what paragraph Fifth of the New Haven-Harlem agreement expressly provides. His language at page 605 is impressive:

> "The legal effect of these contracts is to create a *joint ownership,* for 999 years, of an important portion of the Union Pacific's railroad and appurtenances, 'a full, equal and joint possession of its tracks,' and a subjection to rules and regulations prescribed by the duly authorized officers of the lessor and lessee companies, and, in case of disagreement, subjection to the decision of referees, mutually appointed, invested with power to prescribe schedules, rules and regulations, and to modify existing ones." (Italics ours.)

and again at page 608:

> "The plain meaning, as I think, of these contracts is that the Union Pacific Railway Company has thereby parted with its sole and absolute control of those portions of its road and tracks that are embraced within the scope of the contracts, and with the sole and absolute power to exercise its franchises to occupy, possess and operate such portions of its road, and has agreed to participate, for a period of 999 years, with other railway companies, in the full, joint and equal possession of those portions of its road, in their physical aspect, and to confer upon such other companies the right to join, on equal terms, in the making of all rules and regulations pertaining to the use and management thereof."

It is not an unwarranted inference that the majority of the Court might have felt the same way had it not been for their

interpretation of the provision for control of operation by the lessor, a provision which the New Haven-Harlem agreement does not contain.

3. The act amending the charter of the Harlem added to the agreement upon its being authenticated and filed thereunder the advantages of a franchise. In *Owensboro* v. *Cumberland Telephone & Telegraph Company,* 230 U. S. 58 at p. 65 the Court said of a city ordinance granting the company the right to erect and maintain telephone poles on the streets:

> "That an ordinance granting the right to place and maintain upon the streets of a city poles and wires of such a company is the granting of a property right, has been too many times decided by this court to need more than a reference to some of the later cases . . . As a property right it was assignable, taxable and alienable. Generally it is an asset of great value to such utility companies and a principal basis for credit."

The act did not in terms amend the original act of 1831 under which the Harlem was incorporated, but it did in terms amend one of the succeeding acts relating to the Harlem, all of which constituted amendments to the Harlem's charter under the reserved power to "alter, amend, modify or repeal this Act." It was entitled

> "An Act to Amend an Act Entitled 'An Act Relating to the New York and Harlem Railroad Company passed May 7th, 1840' and the Acts Amending the Same." (Exhibit 8, Record, p. 529.)

The point is that it took the form of an amendment to the prior acts defining the powers of the Harlem instead of an amendment to the prior acts defining the powers of the New Haven, thus manifesting an intention on the part of the legislature to subject the railroad of the Harlem to the

Harlem under the agreement and the State of New York under the statute. The easement was subject to the future contingency that the State of Connecticut under the reserve power of alteration, amendment or repeal might terminate the New Haven's charter but the State of Connecticut was not one of the grantors. The grantors, the Harlem and the State of New York respectively, could not terminate the easement since the agreement was not revocable by the Harlem nor was the franchise revocable by the State of New York for although the latter could terminate the Harlem's charter it could not terminate a franchise granted thereunder to another corporation. *People* v. *O'Brien*, 111 N. Y. 1. Therefore the perpetual easement created by the agreement and statute was an easement in base fee, the equivalent of a joint ownership in perpetuity.

This perpetual easement and franchise was acquired by the New Haven twenty-five years before the Central first acquired its entrance into New York City along those tracks. The Central's lease terminates at the expiration of 401 years from April 1, 1873, but the New Haven will still have the right to operate its trains along those tracks under the original agreement. The mere statement of this proposition demonstrates the inconsistency of the position of the Commission in valuing this entire property to the Central which as a mere lessee for a term of years has no freehold estate therein and whose lease thereof contains an express provision subjecting it to the prior and superior rights of the New Haven.

5. Recognition of the New Haven's property interest in the tracks from Woodlawn to Forty-third Street is found in the act of May 7, 1903 providing for the substitution of electricity for steam as a mode of operation in Park Avenue. (Record, p. 468.) The act first directed the Harlem and its lessee, the Central, to depress all the existing tracks. By section 4 the Harlem, the Central

". . . and The New York, New Haven & Hartford

> Railroad Company, so long as it has any contract or other rights to operate its trains in Park Avenue south of the Harlem River . . . are hereby authorized to run their trains by electricity."

Section 8 provided:

> "Nothing in this act contained shall have the effect of limiting or impairing in any manner or to any extent the existing rights, privileges or franchises of the railroad corporations, or either of them, now using the said tunnel . . . and the said railroad corporations, or either of them, are hereby authorized and empowered to acquire by purchase or by condemnation . . . all property . . . which may be necessary . . . in order to carry out and into effect the provisions of this act."

The only two corporations using the tunnel were the Central, operating the railroad of the Harlem under the lease, and the New Haven, operating its own trains under the agreement of March 7, 1848. The act amounted to a legislative recognition that the New Haven had "rights, privileges and franchises" in Park Avenue and conferred on it the power of eminent domain.

B. *The title of the Carrier in the Grand Central Terminal*

On November 1, 1872 the Harlem, the Central and the New Haven entered into a tripartite lease whereby the Harlem was to construct the original Grand Central Depot at Forty-second Street and lease it to the Central and the New Haven for the joint use and occupation of all three companies, (Record, p. 464), and by section 1 thereof the rights of the New Haven were to continue during the term of its charter, which, as already shown, was perpetual. In its lease of the railroad of the Harlem dated April 1, 1873 the Central expressly covenanted to perform all the obligations imposed on the Harlem under the tripartite lease. (Record, p. 466.)

Following the passage of the act of May 7, 1903 requiring the substitution within five years of electricity for steam as a method of operation in Park Avenue the three railroad companies, the New York, New Haven & Hartford having succeeded the New York and New Haven, entered into a further agreement dated July 24, 1907 providing for the construction of the present Grand Central Terminal and covering the operation of the approaches as far north as Fifty-ninth Street. (Record, p. 470). Paragraph 3 provided:

> "The Central Company, acting for itself and the Harlem Company, as hereinafter authorized, in consideration of the rents hereinafter reserved to be paid by the New Haven Company, and in consideration of the covenants on the part of the New Haven Company hereinafter contained, hath demised, let and leased, and by these presents doth demise, let and lease unto the New Haven Company, during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven Company, the use in common with the Central Company, subject to all the provisions of this agreement of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic, provided, however, that the New Haven Company's right to the use thereof shall in no event exceed fifty (50) per centum of the maximum capacity of said Railroad Terminal or of any part thereof."

and "as compensation for the premises hereby demised" the New Haven was to pay interest on the cost of construction and a proportion of the annual expenses for maintenance and operation.

Paragraph 1 defined the Railroad Terminal with precision. The definition was applied to the plan introduced in evidence (Exhibit 15) by Mr. Buckland in his testimony be-

fore the Supreme Court of the District of Columbia. (Record, p. 475.) By paragraph 2 the Central agreed to construct the terminal. By paragraph 6 the New Haven covenanted "not to assign this lease or any interests therein, or any interest in or to the use of the said Railroad Terminal hereby demised, or to underlet the same or any part thereof without the previous written consent of the Central Company." In the same paragraph it was provided that upon the New Haven's default continued for sixty days "it shall be lawful for" the Central "to enter into and upon said premises and repossess itself thereof." By paragraph 8 the Central covenanted and agreed "that the New Haven Company, paying the rent and sums of money hereinbefore mentioned and performing the covenants and agreements aforesaid on its part to be performed, shall and may at all times during the term hereby granted, peaceably have, hold and enjoy the premises herein demised to it, without any manner of trouble or hindrance of or from the Central Company or any one claiming under it." Paragraph 12 provided that

> "the Railroad Terminal . . . shall be under the sole charge and direction of a Terminal manager, who shall be appointed in writing by the presidents of the Central and New Haven companies, and shall be removable at any time upon written notice by either of said presidents."

Paragraph 25 provided that the covenants and agreements should remain in force during the term of the demise which by paragraph 3 was to continue

> "during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven Company."

1. The fact that in paragraph 3 the thing demised was "the use . . . of said terminal" did not restrict the lessee's

rights to those of a licensee. A demise of the use of property is a demise of the property itself. This demise gave the New Haven an estate in the terminal property. In *Georgia* v. *Cincinnati Southern Railway*, 248 U. S. 26, the State of Georgia made the following grant:

> "There is hereby granted to the Trustees of the Cincinnati Southern Railway, for the use of said railway, *the use* of that portion of the *right-of-way* of the Western and Atlantic Railroad between [certain points] provided always, that this grant is subject to the consent and approval of the lessees of the Western and Atlantic Railroad as to the term of their lease." (Italics ours.)

This act contained no provision for alteration, amendment or repeal. Thereafter the state by statute undertook to repeal the act on the ground that it granted "a license only, that the State was free to revoke." After the passage of the repealing act, the state brought a bill in the United States Supreme Court seeking to enjoin the Cincinnati Southern Railway "from longer occupying or using any portion of the right of way of the Western and Atlantic Railroad; a railroad built and owned by the plaintiff State." In dismissing the bill on the ground that the act granted a right of way in fee to the defendants which could not be revoked, Mr. Justice Holmes said at p. 28:

> "*A grant of the use of a right of way is the grant of a right of way in the ordinary meaning of words,* and a grant of a right of way to a corporation or to perpetual trustees holding for the corporate uses does not need words of succession to be perpetual. The words 'and its successors' or 'in fee' would not enlarge the content of a grant to a corporation." (Italics ours.)

The Commission seeks to distinguish that case on the ground that there was a grant of a portion of the right of way, the land itself. To be sure this Court held that the grantee ac-

quired an interest in the land itself, but the language of the instrument was no stronger than that in the agreement of July 24, 1907, namely, "the use" of a portion of the right of way. The decision is direct authority for the interpretation of the corresponding language in the agreement of July 24, 1907 as a grant of an interest in the Grand Central Terminal itself. That such is the proper interpretation of this agreement in accordance with "the ordinary meaning of the words" is demonstrated by the provisions of paragraph 6 permitting the Central "to enter into and upon said premises and repossess itself thereof" upon the New Haven's default and the provisions of paragraph 8 by which the Central covenants and agrees "that the New Haven Company, paying the rent and sums of money hereinbefore mentioned and performing the covenants and agreements aforesaid on its part to be performed, shall and may at all times during the term hereby granted, peaceably have, hold and enjoy the premises herein demised to it, without any manner of trouble or hindrance of or from the Central Company or any one claiming under it." The New Haven was given the possession and enjoyment of an undivided half of the terminal property.

2. The use was to continue "during the term of the New Haven Company's charter and all renewals thereof, including the charter of any company which shall operate the present railroad of the said New Haven Company." The New Haven's charter from the State of Connecticut was perpetual. A right to the possession and enjoyment of premises in perpetuity is the equivalent of ownership. In *Wells* v. *Savannah,* 181 U. S. 531 an instrument read in part: "The said conditional estates shall amount to this, that *the use* and occupation *of the premises* are forever secured to the purchaser and others claiming under him or her on payment of the ground rent" (Italics ours) and reserved to the grantor a right of re-entry for non-payment of rent. In holding that this language conferred upon the grantee the ownership

thereof, subject to the right of re-entry, and not a mere leasehold, the court specifically approved at page 544 the following language of the state court:

> "The value of property consists in its use, and he who owns the use forever, though it be on condition subsequent is the true owner of the property for the time being."

In *Loomis* v. *Heublein*, 91 Conn. 146 in an amicable suit to settle title the instrument read: "For myself my heirs and assigns, I lease to" the grantee "his heirs and assigns, the exclusive *rights to use* and have the water of the spring in my pasture . . . and *to use*" a described strip of land "so long as he pays me a rent of Twenty Five ($25) Dollars a year in advance and allows plenty of water for the creatures to drink which may be pastured in the lot" with certain reservations for domestic uses. (Italics ours.) The plaintiff claimed that the estate granted was a mere leasehold either from year to year or for an indefinite period terminable by either party at the end of any year. The defendant claimed that it was a base or determinable fee. In upholding the defendant's contention the court said at pages 150-151:

> "The use and enjoyment of the premises by the lessee and his heirs and assigns is, therefore, to be perpetual, limited upon the non-payment of the rent. A deed which conveys the absolute possession and enjoyment of land to a person, his heirs and assigns forever, without limitation, conveys an estate in fee simple. One which conveys the possession and use to a person so long as he makes certain annual payments, or so long as a certain river runs, or tree stands, conveys a qualified or determinable fee."

Upon the authority of the above decisions, and by the terms of the instrument itself, the demise to the New Haven of the

use of one-half of the Railroad Terminal was a grant of an estate therein.

3. The termination of this estate was not within the power of either of the grantors, the Harlem or the Central. It could terminate only upon the New Haven's default in payment of rent or upon the termination of the New Haven's charter by the State of Connecticut and the termination of the charter of any other company which might thereafter operate the railroad. The termination of the New Haven's charter and the charters of such other companies were events which might or might not happen. The estate was to continue until the happening of one of several events which were not within the control of the grantors and might never happen. Such an estate is a base fee. In *Proprietors of Locks and Canals* v. *Boston & Maine Railroad,* 245 Mass. 52, the facts were identical in all pertinent respects with those here presented. In that case there was a lease to a railroad company during its continuance or until the Commonwealth purchased the railroad, a power it had reserved to itself in the charter, or until default in the payment of rent. In the case at bar the lease is to a railroad company during its charter or the charter of any company operating its present railroad or until default in the payment of rent. In each case the grant is to continue until the state chartering the grantee shall do a certain act wholly beyond the control of the grantor or until there is a default in the payment of rent. In that case it was held that the railroad company had a base fee in the property. In construing this instrument the court said at p. 56:

> "The habendum clause shows that the leases are for an indefinite term. They are to continue until the happening of one of several events and then to cease. The crucial event may happen at any time, or it may never happen. The leases, therefore, may never come to an end. The effect of the words used was to convey a base fee."

Similarly the New Haven has a base fee in an undivided half of the Railroad Terminal. To the same effect see: *Owensboro* v. *Cumberland Telephone and Telegraph Company,* 230 U. S. 58; *J. W. Perry* v. *Norfolk,* 220 U. S. 472; *Georgia* v. *Cincinnati Southern Railway,* 248 U. S. 26; *Jamaica Pond Aqueduct Corporation* v. *Chandler,* 9 Allen (Mass.) 159, 168; *Kavanaugh* v. *Cohoes Power & Light Corporation,* 187 N. Y. S. 216; *Piper* v. *Meredith,* 139 Atl. (N.H.) 294; *Ocean Grove Camp Meeting* v. *Reeves,* 79 N. J. L. 334; *Cincinnati College* v. *Yeatman,* 30 Ohio St. 276; *Penick* v. *Atkinson,* 139 Ga. 649; *Connecticut Spiritualist Camp Meeting Association* v. *East Lyme,* 54 Conn. 152.

No words of inheritance are necessary to convey a fee to a corporation. *Georgia* v. *Cincinnati Southern Railway,* 248 U. S. 26. Since 1863 no words of inheritance are necessary to convey a fee even to an individual in New York. New York Statutes at large 1863, Part II, Title 5, §1, now McKinney's New York Consolidated Laws, Book 49, §240; *Kavanaugh* v. *Cohoes Power & Light Corporation,* 187 N. Y. S. 216.

C. *The title of the Carrier in the South Station*

By Act of June 9, 1896 the legislature of Massachusetts incorporated The Boston Terminal Company

> "with power to construct and maintain a union passenger station in the southerly part of the city of Boston, and to provide and operate adequate terminal facilities for the several railroad companies hereinafter authorized to hold the stock of said terminal company, and for the accommodation of the public in connection therewith." (Record, p. 477.)

Section 2 fixed the capital stock of the terminal company at $500,000, authorized each of the following railroad companies to subscribe for 20% of the stock: (1) Boston and

Albany Railroad Company, (2) New England Railroad Company, (3) Boston and Providence Railroad Corporation, (4) Old Colony Railroad Company and (5) The New York, New Haven and Hartford Railroad Company, being lessee of Old Colony Railroad Company, and provided that the stock must be "paid in cash by said railroad companies" before the terminal company began the taking of lands for the site of the new station to be constructed. Section 3 vested the management of the station and its approaches in a board of five trustees, one to be appointed by each of the railroad companies from its board of directors. Section 9 provided:

> "All said railroad companies upon the completion of said station shall use the same, and the terminal facilities provided by said terminal company on the land hereinabove authorized to be taken for all of their terminal passenger business in Boston, instead of the passenger terminals now used by them, and the Supreme Judicial Court, or any justice thereof, shall have jurisdiction in equity to enforce this provision."

Section 10 provided:

> "Said railroad companies hereby required to use said union station shall pay to the terminal company for such use, in monthly payments, such amounts as may be necessary to pay the expenses of its corporate administration and of the maintenance and operation of said station, and of the facilities connected therewith and owned by said terminal company, including insurance and all repairs, all taxes and assessments which may be required to be paid by said terminal company, the interest upon its bonds or other obligations issued under the provisions of this act as the same shall become payable, and a dividend, not to exceed four per cent. per annum upon its capital stock. Each of said railroad companies shall pay for such use of said sta-

> tion and facilities in the proportion in which it has the use thereof."

and that the proportion of use of the several railroad companies should be fixed from time to time by agreement between them, or in case they fail to agree, by the Massachusetts board of railroad commissioners and that the payments made by each of the railroad companies to the terminal company under this section "shall be deemed a part of their operating expenses" and vested the Supreme Judicial Court with jurisdiction to compel the making of such payments. Section 25 provided:

> "The terminal company shall pay a franchise tax to the Commonwealth upon the true market value of its capital stock, without any deduction, whatever, but its real estate required by this act to be used by said railroad companies shall be assessed to and the taxes thereon shall be paid by said railroad companies, and in the assessment of franchise taxes upon said railroad companies each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act."

Pursuant to this act The Boston Terminal Company was incorporated, each of the five railroad companies subscribed for 20% of its capital stock, and the terminal, known and herein referred to as the South Station, and its approaches were constructed. The New York, New Haven and Hartford has acquired the railroad of New England Railroad Company and leased the railroads of Boston and Providence Railroad Corporation and Old Colony Railroad Company. The New York Central Railroad Company has leased the railroad of the Boston and Albany Railroad Company. The proportion of use as between the New Haven and the Central as of the valuation date was 75% by the former and 25% by the latter.

From the above statement it appears that the interest of the New Haven in the South Station and its approaches is not that of a mere stockholder in the terminal company. Upon the completion of the terminal facilities the act granted to the New Haven *the right to use* a certain proportion thereof, and, indeed, *required* the New Haven *to exercise that right* for all of its terminal passenger business in Boston. This grant was unlimited in duration and therefore perpetual. The grant of such a perpetual right to use property constitutes an estate in the property itself for the reasons and under the decisions already set forth. *Owensboro* v. *Cumberland Telephone and Telegraph Company,* 230 U. S. 58. *Georgia* v. *Cincinnati Southern Railway,* 248 U. S. 26.

The interest of the New Haven in the property was described as "ownership" for certain purposes in section 10 providing that although the terminal company shall pay a franchise tax, the "real estate acquired by this act to be used by said railroad companies shall be assessed to and the taxes thereon shall be paid by said railroad companies and in the assessment of franchise taxes upon said railroad companies each of them shall be deemed to be the owner of said real estate in the proportion in which it then has the use thereof under this act". It is plain from this specific provision and the general tenor of the act that an interest in the property itself was vested in the railroad companies. The situation is analogous to that in *Chicago, Milwaukee & St. Paul Railroad Company* v. *Des Moines Union Railway Company,* 254 U. S. 196. There three railroad companies entered into an agreement for the acquisition of land for the construction of a union terminal, the title to be in a trustee and the railroad companies to share the cost of maintenance and operation in proportion to their respective use of the terminal. Thereafter they organized a terminal company to which they conveyed the land by absolute deeds in exchange for its capital stock. The court held that under

the circumstances they did not intend to treat the terminal company as a separate entity in which they had only the rights of stockholders, but as a trustee of the land for their benefit.

Ownership of the stock as such does not carry with it the right to use the property. Section 2 did authorize the railroad companies to subscribe for the stock, but as mere stockholders they acquired no right to use the property. An entirely distinct section of the act, section 9, authorized and required them to use the new station instead of the stations they were then using and gave the Supreme Judicial Court jurisdiction to make them do so. The Commission proceeds on the theory that as the value of the easement is reflected in the value of the stock it is immaterial whether they assign that value to the New Haven as a property owner or as a stockholder. It does make a great difference to the New Haven. It is doubtful whether capital stock is "railway property held for and used in the service of transportation" within the meaning of the rate-making sections of the Interstate Commerce Act whereas terminal property certainly is. Moreover, the proportions are not the same, for the New Haven, though controlling 80% of the stock, uses only 75% of the property, which demonstrates the fallacy of the argument.

II

The Commission is Not Authorized by Section 19a to Make a Valuation of Physical Property to the Exclusion of Estates and Other Incorporeal Interests Therein

The final valuation fails to place any value on the rights of the Carrier in the tracks from Woodlawn to Forty-third Street, the Grand Central Terminal and The Boston Terminal Company property, not because those rights were not "property," not because they were not valuable, but because upon the rate base which the Commission has seen fit to adopt no value is assigned the rights of one carrier in

physical property constructed or acquired by another carrier subject to those rights. Conceiving its duty under Section 19a to be limited to making a physical valuation of each piece of property owned or used by a carrier, the Commission disregards what it calls "contracts for the use of property" even though those contracts, as here, create a legal estate, an incorporeal hereditament, in the property itself. The Commission cannot thus arbitrarily exclude from valuation such an estate in property. It is "property" and it is "owned" by the carrier and therefore it becomes the duty of the Commission to ascertain and report its value.

The Commission did not purport to ascertain and report the value of all the Carrier's property. It reported something which it designated "value for rate-making purposes." As to the tracks from Woodlawn to Forty-third Street the report states (Record, p. 64):

> "In our finding of value of the property owned or used in common carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right. We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole. Nevertheless, for the purpose of finding a rate base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers."

As to the joint use of the Grand Central Terminal it states (Record, p. 66):

> "The right to use these extensive terminal facilities

is a commercially valuable contract right owned by the carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value, for rate-making purposes, of the carrier's property owned or used in common carrier service, no specific value will be reported for the right of the carrier to the use of this property."

That the Commission was assuming to dictate its own conception of a proper rate base instead of ascertaining and reporting the actual fair value of all the property of the Carrier is apparent upon the face of the report where the Carrier's rights in the tracks from Woodlawn to Forty-third Street are arbitrarily excluded because "for the purpose of finding a rate base" they are "distinguished only by their magnitude from the many other similar rights of carriers to the joint use of property." The Commission makes no effort to place a value on what it admits are rights "valuable and essential to the operation of its property as a whole," "a valuable asset to the owning company." The Commission simply determines that upon its own conception of a proper rate base this "valuable asset" should not be valued.

The so-called Valuation Act, Section 19a of the Interstate Commerce Act, was approved on March 1, 1913. Congress did not indicate for what purpose the valuations were to be used and the Commission itself, as stated in its first valuation report, *Texas Midland Railroad,* 75 I. C. C. 1, 6 decided July 31, 1918, did not know:

"The act does not specify any purpose for which a value is to be found or to which the valuation is to be put, except as it provides that all valuations by the Commission shall be *prima facie* evidence of the value of the property in all proceedings under the act to regulate commerce, in all judicial proceedings for the enforcement of that act, and in judicial proceedings

> brought to enjoin, set aside, annul or suspend, in whole or in part, any order of the Commission."

At that time the Commission was concerned primarily with rate-making, but Section 19a made no reference to that subject. It was not until the Transportation Act approved February 28, 1920, two years after the *Texas Midland Railroad* report, that Congress without making any substantial change in Section 19a nevertheless specified that the valuations thereunder should be used not only in rate-making but also in consolidation, recapture of excess earnings, the division of joint rates, and the issuance of securities.

A. *There is no provision for a special or restricted valuation*

Although the expression "physical valuation" had been discussed at Committee hearings prior to its enactment, Section 19a made no provision for a valuation solely of physical property to the exclusion of estates and other incorporeal interests therein.

Subdivision (a) directs the Commission to

> "investigate, ascertain and report the value of all the property owned or used by every common carrier subject to the provisions of the Act."

Subdivision (b) (First) directs it to ascertain and report in detail as to each piece of property, other than land, owned or used for purposes of common carrier "the original cost to date, the cost of reproduction new, the cost of reproduction less depeciation" and an analysis of the methods adopted. It then directs the Commission to

> "in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier."

with a like analysis of methods. Subdivision (b) (Second) directs it to state the original cost of all lands, rights of way

and terminals owned or used for the purposes of a common carrier and

> "the present value of the same."

Subdivision (c) requires the investigation to show

> "the value of the property of every common carrier"

as a whole and separately by states. Subdivision (i) makes the final valuation *prima facie* evidence

> "of the value of the property."

in all proceedings under the Act and in all judicial proceedings for its enforcement or to enjoin, set aside, annul or suspend orders of the Commission. Throughout these provisions the thing to be ascertained and reported is the "value" of the property. Neither by definition nor implication is there any suggestion that the value should be a special or restricted value, a value for any particular purpose or any different value fom its actual pecuniary and economic value.

Subdivision (b) (Third) requires that the investigation and report shall show separately

> "the property held for purposes other than those of a common carrier, and the original cost and present value of the same."

and the valuation thereof is to be made in the same manner as that of property held for purposes of a common carrier for in (Fourth) the Act proceeds to lay down a general method of valuation to be adopted by the Commission in ascertaining the original cost "of the property of such common carrier". It cannot be supposed that in valuing property held for purposes other than those of a common carrier the Commission was to ascertain and report a different value from that used in commercial transactions yet

the Act requires the valuation of both classes of property without distinction as to method or result.

The only mention of "physical property" appears in the following significant language in Subdivision (a):

> "The Commission shall make an inventory which shall list the *property* of every common carrier . . . in detail, and show the value *thereof* as hereinafter provided, and shall classify the *physical property,* as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission." (Italics ours.)

Here in the same sentence Congress distinguishes between "property" and "physical property"—and note what the distinction is. The Commission is to inventory the "property" and show the value *thereof,* the value of all the property owned or used by the carrier and in so doing the "physical property" is to be classified according to the Commission's accounting rules. Had Congress intended the inventory to include only the physical property the sentence would have read "The Commission shall make an inventory of the property and classify it, as nearly as practicable, in conformity, etc." By further providing in the same sentence that the value to be shown in the inventory was to be the value "thereof," referring to the "property" as distinguished from the "physical property" Congress made it only too plain that the inventory was to show two separate things, the *value* of all the property owned or used by the carrier, whether physical or incorporeal, and the *classification* of the physical property. Any special or restricted valuation resulting in the exclusion of all but physical property is an unauthorized departure from the plain meaning of the act. The Commission endeavors to explain this distinction between "property" and "physical property" on the ground that the former refers to such

items of accounting as engineering, supervision, and interest during construction but the explanation is not convincing for the word "property" is in no way descriptive of accounting items.

In final confirmation of its intention to have the valuation represent something more than a mere schedule of the physical properties Congress in Subdivision (b) particularly directed the Commission to

> "ascertain and report separately other values, and elements of value, if any, of the property of such common carrier"

In the adaptability of the location as an entrance into two great communities for railroad purposes lies an "element of value", perhaps the chief element of value of the property. Such adaptability for railroad purposes was referred to by Mr. Justice Hughes in the *Minnesota Rate Cases*, 230 U. S. 352, 451, as "an element to be considered" in determining actual fair value. This element of value in the tracks and terminals does not belong exclusively to the Harlem because the New Haven has a perpetual right to enjoy it in common with others. The Harlem could not convey the exclusive right to enjoy that element of value to anyone else because the conveyance would have to be made subject to the New Haven's perpetual right to enjoy it also. Note for example that in the mortgage of June 1, 1897 securing the Harlem's bond issue paragraph 8 of the granting clause conveyed the property to the trustee "*subject however* to the rights of The New York, New Haven and Hartford Railroad Company in respect to any of said property under a certain agreement bearing date March 17, 1848 . . ." (Record, p. 467.) Upon no sound basis of valuation, therefore, can this element of value be said to belong entirely to the Harlem or to its lessee, the Central. It belongs in part to the New Haven because of its perpetual rights and must be so valued.

B. *The arbitrary rule for the valuation of jointly used property adopted by the Commission in the Texas Midland Railroad report is inconsistent with the statute*

Regardless of the evident intention of Congress that all the property, whether physical or incorporeal, of each carrier be inventoried and valued, the Commission in its very first valuation report, *Texas Midland Railroad,* supra, adopted an arbitrary rule which as applied to cases like this where one carrier has an estate or other incorporeal interest in the physical property of another carrier is in direct conflict with the provisions of Section 19a. The gist of the rule is that where one carrier has a right to use the physical property of another carrier, the entire value of the physical property as a unit is included in the inventory of the so-called "owner" and no value is assigned to the right of use, irrespective of the legal nature or extent thereof, unless the right of use be exclusive in which event the entire value of the physical property as a unit is included in the inventory of the carrier having the exclusive use thereof. The rule may best be stated in the Commission's own language from that report:

> "It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use. Where such an arrangement exists as to property which is of sufficient value to be of significance, the portion in which trackage or similar rights are granted is inventoried by itself and the fact and nature of the use described in the inventories both of the owner and the user.
>
> ". . . It has been the desire of the Commission to appraise all the carrier property operated by carriers subject to its jurisdiction, but to report that property

> but once. When the used column of all carriers covered by this appraisal is totaled, it should give the total reproduction costs of all common-carrier property in the United States without duplication. This can not be done if the claim of the carriers that all property over which a particular carrier operates shall be included as used both by the owner and by the user." (75 I.C.C. 1, Appendix 3, pp. 123, 124.)

Note that while reference to the nature of the rights is made in the inventory of each carrier, the amount, that is to say the valuation, appears only in the inventory of the carrier "owning" the railroad, subject to those rights, or, as in this case, in the inventory of its exclusive lessee.

> "In addition to the use of property owned, many common carriers have made arrangements by contracts for the use of property for common-carrier purposes which is owned by others . . . Where property is owned by a common carrier and is used by it jointly with another carrier or carriers for common-carrier purposes, the property is included in detail in the inventory of the owning carrier and reference is made to the use by the other carrier or carriers. The extent and terms of the use appear also in the inventory of the using carrier or carriers." (75 I. C. C. 1, Decision, pp. 20, 21).

Note again that it is only the "extent and terms of use," not the value, which appears in the inventory of the carrier having the right to use the property. Continuing:

> "In its protest the carrier makes no complaint concerning the property used exclusively by it, but insists that the procedure above outlined is erroneous to the extent that it results in omitting from the inventory the three cost values of property used but not owned by it and the value of its right to use such property." (Decision, p. 21.)

"In addition to its claim that the three cost values of the property used but not owned should be included in its inventory, the carrier asserts that it is our duty to report separately a figure as the value of the right to use. It is a sufficient answer to this contention to state it is now universally accepted that it is the fair value of the property used by the public service corporation in serving the public which is to govern in fixing rates. *San Diego Land Co.* v. *National City,* 174 U. S. 739. This being true, the value of that property can not be increased or diminished by contracts or other arrangements between the carriers themselves. In the absence of an improper payment as rental the public is not concerned with the acts of carriers between themselves. The law requires the ascertainment of values for property owned or used, but not the value of the use." (Decision, pp. 23, 24.)

This very statement of the rule shows that it was necessarily limited to cases where one carrier owned the property and the other carrier had a mere contract for the use of it and had no possible application to cases where the contract created an estate in the property itself, making both carriers joint owners.

Applying this arbitrary rule the Commission has included the entire value of the tracks from Woodlawn to Forty-third Street and of the Grand Central Terminal in the inventory of the Central solely because of the indenture of April 1, 1873, whereby the Harlem leased its railroad to the Central for 401 years. In so doing the Commission has disregarded the fact that that very lease was made subject to the perpetual easement of the New Haven in the tracks of the Harlem from Woodlawn to Forty-third Street created by the agreement of March 17, 1848 and the Central covenanted to perform all the conditions and obligations of the Harlem thereunder. The unfairness and inconsistency of the Commission's position is demonstrated by the fact that

in the tracks from Woodlawn to Forty-third Street the rights of the New Haven are prior and superior to those of the Central and in the Grand Central Terminal the rights of the New Haven, though not prior, are superior to those of the Central. The only interest of the Central in the tracks from Woodlawn to Forty-third Street is by virtue of a lease which terminates at the expiration of 401 years and it was made expressly subject to a pre-existing easement of the New Haven which is perpetual. The only interest of the Central in the Grand Central Terminal is by virtue of an agreement which terminates as to it with said lease but continues as to the New Haven in perpetuity.

The rule is not even consistent with an interpretation of Section 19a as requiring a mere valuation of physical property. If the New Haven had an exclusive lease of the property, that is to say a 100% use of it, even for a short term of years, the Commission would have included the entire value of the tracks and terminals in the inventory of the New Haven, just as it has in fact included that entire value in the inventory of the Central. The distinction therefore is not between the ownership of physical and incorporeal property, but between exclusive and joint use thereof, a purely arbitrary, unfair and unworkable method of valuation for any purpose.

C. *The proper valuation of incorporeal property would not result in duplication*

The Commission purports to be disturbed by the practical difficulties which might arise in undertaking to value the many contracts which carriers have made with each other covering the joint use of tracks or terminals and accordingly has adopted the arbitrary rule that no value will be assigned to the right of use. The Commission says that to value the contracts separately from the physical property would result in duplication and make the aggregate valuation greater than the value of the property.

In this the Commission fails to distinguish between those contracts which create mere contractual rights and those which create estates in the property itself. The Carrier is not placing any academic interpretation on the word "property." It is not using it in the constitutional sense which includes contracts, labor and other individual rights. It is not asking the Commission to value as such the agreements of March 17, 1848 and July 24, 1907. It is using "property" in the same sense as the Commission, namely, the tracks and the terminal, but it contends that those agreements created a property interest, an estate, an incorporeal hereditament, in the tracks and terminal themselves. The Harlem is not the sole owner of that property and neither the Harlem nor its lessee, the Central, is entitled to have the full value of that property included in its inventory. The ownership of the property is subject to the estates therein. The value of those estates should be deducted from the value of the tracks and terminal and assigned to the Carrier. There would then be no duplication.

No doubt, as the Commission says, once they include the entire value of the property in the inventory of some one carrier, to then include the value of the rights of other carriers therein in their own inventories would result in an aggregate valuation greater than the actual value of the property. The error of the Commission is in its hypothesis, not in its conclusion. The duplication results from the insistence of the Commission on valuing a strip of land or a terminal as a whole to one carrier. The *value* should be assigned to and among the several carriers having property rights therein in proportion to their respective interests. This would be in accordance with the ordinary methods of valuation in everyday use. If a tract of land be crossed by a right of way no intelligent appraiser reporting on the value of the fee would give it the same value as though the right of way did not exist. The value of the land would be reduced by the value of the

right of way. The practical application of the rule arises in connection with long-term leases. The lease has no value unless the rental value of the property exceeds the rent reserved, but to the extent that the lease has value the reversion is less valuable because the owner of the reversion must accept the rent reserved instead of being able to obtain the full rental value of the property. In accordance with these principles the Commission should have determined the value of the New Haven's easement in the tracks from Woodlawn to Forty-third Street, assigned that value to the New Haven and the balance to the Harlem or the Central.

From what the Commission said in the *Texas Midland Railroad* report and now reiterates in its brief it may fairly be inferred that its motivating objection is based on the difficulty and inconvenience of making such a proper valuation:

> "To say that the Commission must seek out every instance of that kind, make each of these pieces of track a valuation section, distinguish between those pieces which are used by one carrier in common with the owner, or by several carriers in common with the owner, would be to impose a most intolerable burden and to confuse beyond reason the reports themselves without practical benefit." (Appendix 3, p. 125.)

But it should be unnecessary to point out, as this Court in discussing Section 19a felt constrained to do in *Kansas City Southern Railway Company* v. *Interstate Commerce Commission*, 252 U. S. 178 at 188, hereinafter discussed at length, that

> "Even if it be further conceded that the subject-matter of the valuations in question which the act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its

> consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the act of Congress, or what is equivalent thereto, of exerting the general power which the act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise."

This sort of property right has been valued, and been required by the courts to be valued, in numerous cases involving the valuation of public utilities even for rate-making purposes. In *San Joaquin Company* v. *Stanislaus County,* 233 U. S. 454, and *McCardle* v. *Indianapolis Water Company,* 272 U. S. 400, it was held that the value of the company's water rights should be included in the rate base, the Court saying in the latter case:

> "This right is an extraordinarily valuable part of the whole value of this property. . . . This development of its water rights, which has been accomplished by the water company at times with extreme difficulty, does actually largely increase the value of the property. . . . The value of these water rights must be included."

Doubtless Congress intended the Commission to exercise judgment and discretion in ascertaining the value of the property to be inventoried, in fact subdivision (e) provides that all rules and regulations made by the Commission "for the purpose of administering the provisions of this section" shall have the force and effect of law, but nowhere is the Commission invested with any judgment or discretion to exclude from the inventory any property owned by the carrier or to make any special or restricted valuation which has that effect. In granting a writ of mandamus to compel the Commission to consider and act in respect of each item mentioned in Section 19a this Court has referred to the language of that section as a "direct and express command," *Kansas City Southern Railway Company* v. *Inter-*

state Commerce Commission, supra. The command here is to inventory "all the property owned" by the carrier.

III

The Commission is not Authorized to Report as a "Value for Rate-Making Purposes" under Section 15a or Otherwise a Valuation Which Excludes Part of the Carrier's Property

When the *Texas Midland Railroad* report was made, July 31, 1918, the only immediate purpose for which the valuations under Section 19a could be used was in rate-making because the making of rates was the principal duty of the Commission in those days. The making of rates involves the aggregate return on the aggregate property in the territory served irrespective of ownership as between the several carriers. The important consideration is the relation which the total income produced by the rates in the territory bears to the total value of the railway property in that territory. For that purpose the Commission assumed that it made no great difference in whose inventory a right of way or a terminal was included so long as the total property used in the service was inventoried and valued somewhere. As the Commission said in the *Texas Midland Railroad* report:

> "When the valuation work has been completed for all the railroads in the United States, the Commission, the Congress, and the public will be informed with respect to every piece of property used in serving the public, with the single exception of that insignificant portion which is privately owned and partially used by common carriers. . . . All the property used in serving the public will be inventoried and valued, and will be inventoried and valued once and only once." (Decision, p. 24.)

However arbitrary its rule as to the valuation of jointly used property may have been, its refusal to assign a value

to the right of one carrier to use the property of another, whether the right of use constituted an estate therein or not, worked no practical injury to the carriers and resulted in no legal proceedings or effective protest to test its validity.

Upon the enactment of the Transportation Act, February 28, 1920 the practical situation was entirely changed. That Act, amending the Interstate Commerce Act, for the first time invested the Commission with jurisdiction over the consolidation of railroad properties, the recapture of excess earnings, the division of joint rates and the issuance of securities.

Consolidation. Section 5 requires the Commission to prepare and adopt a plan of consolidation of all the railway properties into a limited number of systems and Subdivision (6) (b) thereof provides:

> "The value of the properties sought to be consolidated shall be ascertained by the Commission under Section 19a of the Act."

Recapture. Under Subdivision (6) of Section 15a one-half of the annual net railway operating income in excess of 6% of the value of the railway property held or used by a carrier in the service of transportation is recoverable by the Commission for the purpose of establishing a general railroad contingent fund from which loans to less fortunate carriers may be made and

> "The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

and paragraph (4) provides that

> "Whenever pursuant to Section 19a of this Act the value of the railway property of any carrier held and used in the service of transportation has been finally

> ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."

referring to the aggregate value of such property of the carriers "as a whole or as a whole in each of such rate groups or territories as the Commission may from time to time designate."

Division of joint rates. Issuance of securities. In addition to the above mentioned specific provisions the final valuation also becomes *prima facie* evidence for other purposes where the value of the property is involved because whenever any proceeding raising a question as to such value is initiated the provision of Subdivision (i) of Section 19a making the final valuation

> "*prima facie* evidence of the value of the property in all proceedings under the Act . . . as of the date of the fixing thereof and in all judicial proceedings for the enforcement of the Act . . . and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

is applicable. The value of the property of a carrier is involved under Subdivision (6) of Section 15 directing the Commission in prescribing the division of joint rates to give due consideration to a "fair return upon the railway property held for and used in the service of transportation" by the respective carriers. It is also involved under Subdivision (2) of Section 20a giving the Commission jurisdiction over the issuance of securities by the several carriers.

All of these purposes draw in question not the value of the property of the carriers as a whole or by groups, as in the case of rate-making, but the value of the property of each individual carrier as contrasted with the value of the property of some other carrier. The Carrier contends,

as will hereinafter more fully appear, that under the Act and the decisions of this Court the true value even for rate-making purposes is the actual fair value of the property used in the service to which the rates apply. But whatever may be said in favor of a special rate base for use in establishing rates which as between the carriers as a whole and the public will yield a fair return on the aggregate property devoted to public use, no base which excludes part of the property of any particular carrier can be used in determining its own individual rights as an owner of private property. That property owned by a railroad company does not lose the constitutional protection afforded to private property by reason of being devoted to public use has been decided many times. As was said in *Western Union Telegraph Company* v. *Pennsylvania Railroad Company*, 195 U. S. 540 at 569:

> "In *Sweet* v. *Rechel*, *Cherokee Nation* v. *Kansas Railway Co.*, and *Kohl* v. *United States*, all cited *supra*, the property to which the constitutional protection was applied was property in private use. Their doctrine applies as well to private property devoted to a public use. . . . A railroad's right of way has, therefore, the substantiality of the fee, and it is private property even to the public in all else but an interest and benefit in its uses. It cannot be invaded without guilt of trespass. It cannot be appropriated in whole or part except upon the payment of compensation. In other words, it is entitled to the protection of the Constitution, and in the precise manner in which protection is given."

Upon the enactment of these amendments specifying the particular purposes for which the valuations under Section 19a were to be used and making it essential that the full value of all the property of each individual carrier, whether physical or incorporeal, should be included in its own inventory, it became incumbent on the Commission to recon-

sider the validity and effect of its arbitrary rule for valuing jointly used property. Instead of appreciating the necessity for a modification of the rule, however, the Commission seized upon Section 15a as a justification for defining its single sum valuations under Section 19a as a "value for rate-making purposes" and continuing to exclude incorporeal property therefrom.

Subdivision (4) of Section 15a provides that

> "For the purposes of this section,"

namely the purpose of determining the "aggregate value of the railway property" of the carriers upon which they will earn an "aggregate annual net operating income equal, as near as may be, to a fair return,"—

> "such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under Section 19a of this Act, in so far as deemed by it available and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to Section 19a of this Act, the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."

Presumably relying upon the provision directing it to

> "give due consideration to all the elements of value recognized by the law of the land for rate-making purposes,"

followed by the provision that the valuation of a carrier's property made under Section 19a shall be deemed to be the value thereof under Section 15a, the Commission in the first valuation in which it decided to report a single sum value for the entire property, *San Pedro, Los Angeles and Salt Lake Railroad Company*, 75 I. C. C. 463, 507, reported June 7, 1923, determined that Section 15a required that single sum value to be a "value for rate-making purposes". The Commission indicated in that report (p. 506) and now asserts in its brief in this case that property may have a different value for rate-making purposes than that which it has for other purposes such as consolidation, division of joint rates and the issuance of securities.

The Commission proceeded upon the theory that its duty is first to determine under Section 15a what property and what basis of valuation should be used in establishing a rate base or a "value for rate-making purposes" and to report that rate base as being the "value" under Section 19a of such of the property as is "held for and used in the service of transportation." The Carrier contends that on the contrary it is the duty of the Commission to ascertain and report under Section 19a by application of the principles of valuation set forth therein the actual fair value of all the property of each carrier and the "value" so determined of that part of its property "held for and used in the service of transportation" automatically becomes the rate base or "value for rate-making purposes" under Section 15a.

The question is of tremendous importance to the Commission and the public as well as to the carriers. The members of the Commission have been by no means unanimous in their attitude towards this question. In *Atlanta, Birmingham & Atlantic Railroad Company*, 75 I. C. C. 645 at pages 665 and 666, and *Kansas City Southern Railway Company*, 84 I. C. C. 113, at page 117, the position of the majority that the value under Section 19a must be a special "value for

rate-making purposes" is set forth at length. The position of the carriers that the Commission must accept as "value for rate-making purposes" under Section 15a the actual fair value reported under Section 19a of all the property held for common carrier purposes can hardly be expressed more effectively than in the language of Commissioner Potter who dissented in the *Kansas City Southern Railway Company* report, supra, at pages 125, 126:

> "It is not for us to determine the amount upon which carriers 'are entitled to earn a fair return'. The law does that in clear and positive manner. The amount is the 'value' of the property, nothing different and neither more nor less. We are authorized only to determine value. When we determine value, the law determines that that value shall be the amount on which the carriers are entitled to earn a return. Seemingly we violate the law when we determine an amount on which we think the carrier should be allowed to earn a fair return and then arbitrarily call that amount value."

A. *The valuation must be susceptible of use for other purposes as well as rate making*

Section 15a was not intended to bring about a narrower policy in railroad valuation than had obtained theretofore. It in no sense restricted or limited the valuations under Section 19a then in progress. On the contrary Subdivision (4) of Section 15a was a mandate to the Commission to give due consideration to "*all*" the elements of value recognized by the law of the land for rate-making purposes and was a warning to the Commission to give the "*property investment account*" only that consideration to which it was entitled under the law of the land. The Transportation Act gave the carriers as property owners a new interest

in seeing that their individual properties were assigned their full value especially in view of the recapture provisions and Congress sought to emphasize to the Commission the necessity for taking into consideration all the elements of value which had long been recognized by the law of the land.

The law of the land as laid down in the leading case of *Smyth* v. *Ames*, 169 U. S. 466, established no special or restricted value for rate-making purposes. That this Court considered the proper rate base in public utility valuations to be the actual fair value of all property used in the service is plain from the following passage at p. 546:

> "We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

The whole tenor of the original Valuation Act, Section 19a, discloses an effort on the part of Congress to adopt not only this general rule of valuation, but also the particular items enumerated by the Court as the proper elements for determining the actual fair value of the property. Congress left to the Commission the weight to be given each element, but it directed the Commission to consider every one of them. The first element mentioned in *Smyth* v. *Ames* is "original cost of construction" and in Subdivision (b)

(First) of Section 19a the Commission is directed to ascertain and report the "original cost to date." The second element was "amount expended in permanent improvements" and Subdivision (b) (Second) directs a separate report of "improvements." The third element was "amount and market value of its bonds and stocks" and Subdivision (b) (Fourth) requires a history showing "increases and decreases in stock, bonds or other securities." The fourth element was "present as compared with original cost of construction" and Section 19a in various instances directs the ascertainment of "reproduction cost less depreciation" and "present value." The fifth element was "earning capacity" and Subdivision (b) (Fourth) direct a report on the "net and gross earnings."

The difficulties caused by first determining an arbitrary rate base under Section 15a and then calling that the value of the property under Section 19a for purposes of consolidation, recapture, division of joint rates and the issuance of securities have been pointed out with the unfair results which flow therefrom. When, however, the actual fair value of the property is first determined under Section 19a and then used as the rate base under Section 15a all the various sections of the Act can be interpreted and administered harmoniously and fairly. Section 19a, enacted March 1, 1913, makes no mention of "value for rate-making purposes." The Commission is to find the "value" of all the property, both that held for purposes of a common carrier and that held for purposes other than those of a common carrier. By amendment enacted February 28, 1920, that value was made *prima facie* evidence in consolidation, recapture, division of joint rates and the issuance of securities, where the value of the property as between each carrier and the other carriers, their individual rights as owners of private property, are involved. As part of the same amendment Congress also enacted Section 15a directing the Commission to

> "initiate, modify, establish and adjust such rates so that carriers as a whole . . . will . . . earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation."

but Congress did not leave it to the Commission to determine in its discretion what should constitute such "aggregate value" upon which the rates were to be based, the rate base. On the contrary in Subdivision (4) Congress provided that the final valuation under Section 19a

> "shall be deemed by the Commission to be the value thereof."

The only place where Congress, either in the original act or in the amendment, makes any reference to a "value for rate-making purposes" is in the second sentence of Subdivision (4) authorizing the Commission to utilize the results of its investigation under Section 19a "insofar as deemed by it available," in other words, pending completion of the final report, and directing it to

> "give due consideration to all the elements of value recognized by the law of the land for rate-making purposes."

This sentence is the Commission's guide in establishing rates upon which the carriers will earn a fair return pending the completion of its final valuation under Section 19a. Congress intended to make clear to the Commission that the rate base to be used pending such final valuation was to be the standard rate base prescribed by the law of the land, namely, the actual fair value of the property "held for and used in the service of transportation". By so doing Congress dispensed with the necessity of changing the rates when the final valuation should be completed because the

final valuation would also be based on the actual fair value of that property. There is no reference to value "for rate-making purposes" in the third sentence of Subdivision 4 providing that the final valuation under Section 19a shall be deemed to be the value under Section 15a for the very reason that the Commission no longer needed any guide for determining the rate base because the rate base became automatically determined by the final valuation.

The value is spoken of in Section 15a as a value "for rate-making purposes" because Congress in this section was dealing with rates and in the next place only that part of the property "held for and used in the service of transportation" was involved, but under the law of the land, specifically adopted by Congress as the test, the value for rate-making purposes is the actual fair value of all the property used in the public service and a valuation which omits part of that property is not a proper rate base. In the words of Mr. Justice McReynolds speaking for the majority of the Court in a most recent valuation case, *St. Louis & O'Fallon Railway Company* v. *United States,* 279 U. S. 461, at page 484:

> "Paragraph 4, §15a, directs that in determining values of railway property for purposes of recapture the Commission 'shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes'. . . . This is an express command; and the carrier has a clear right to demand compliance therewith.
>
> "The elements of value recognized by the law of the land for rate-making purposes have been pointed out many times by this Court."

citing *Smyth* v. *Ames,* supra, and many subsequent decisions establishing the proposition that value for rate-making purposes means actual fair value of all the property used in the service. Although the decision in the *O'Fallon* case was

by a divided court there was no dissent among the justices upon this proposition as evidenced by the following passage from the dissenting opinion of Mr. Justice Brandeis at p. 505:

> "It follows, that since the Commission is required by the rule of *Smyth* v. *Ames*, re-affirmed in the *Southwestern Bell* case, to determine the rate-base under § 15a by *actual value* as distinguished from prudent investment. . . ." (Italics ours.)

In using the expression "value for rate-making purposes" Congress was merely using descriptive words to distinguish the value of that part of the property used in the service from the value of the rest of the property. It by no means intended to authorize the Commission to determine two kinds of value for the same property. It did not contemplate that the value of property can vary according to the purpose for which it is to be used. That contention has long since been disposed of as part of the "law of the land" in the *Minnesota Rate Cases*, 230 U. S. 352, 449, where the court refused to accept a valuation made "for railway purposes," Mr. Justice Hughes saying at p. 451:

> "It is urged that, in this view, the company would be bound to pay the 'railway value' of the property. But, supposing the railroad to be obliterated and the lands to be held by others, the owner of each parcel would be entitled to receive on its condemnation, its *fair market value* for all its available uses and purposes. . . . If, in the case of any such owner, his property had a peculiar value or special adaptation for railroad purposes, that would be an element to be considered. . . . But still the inquiry would be as to the fair market value of the property."

The Commission cites as authority for its proposition that value of property for rate-making purposes may differ from

its value for other purposes not only *Minnesota Rate Cases*, supra, but *Missouri Rate Cases*, 230 U. S. 474, *Galveston Electric Company* v. *Galveston*, 258 U. S. 388, 396, 397 and *St. Louis & O'Fallon Railway Company* v. *United States*, supra. Those cases do make the obvious point that in making a valuation for rate-making purposes the rates then in force are not to be considered, but there is nothing in any of those cases to indicate that the kind of property to be valued for rate-making purposes is any different from the kind to be valued for other purposes. In the *Missouri Rate Cases*, supra, local assessed valuations for tax purposes were rejected in determining the rate base, but upon the ground that there was no evidence as to how the assessed valuations were determined and not upon the ground that value for tax purposes was any different from value for rate-making purposes.

The Commission also claims that as the words "prima facie evidence" do not appear in Section 15a Congress must have intended that the valuation under Section 19a should be final when used for rate-making. From this the Commission argues that its valuations under Section 19a must necessarily be for rate-making purposes leaving the carriers an opportunity to overcome their prima facie effect for other purposes by showing that when so used they must be supplemented by other evidence. The same argument could be made in connection with the use of the valuation under Section 19a in consolidation for Section 5 merely provides that the value of the properties to be consolidated shall be ascertained under Section 19a and the Commission might equally have concluded that because the words "*prima facie* evidence" do not appear in that section its valuations under Section 19a should have been made for purposes of consolidation leaving the carrier to supplement them for other purposes. It seems unnecessary to proceed with further analysis of the Commission's argument on this point be-

cause it is quite apparent that when Congress provided in a special subdivision of Section 19a, subdivision (i), that the final valuations should be "*prima facie* evidence of the value of the property in all proceedings under the Act" they contemplated a single valuation which should be used in all such proceedings and made it *prima facie* evidence solely for the purpose of permitting the carriers to introduce evidence of errors in valuation occurring therein. By no strained construction of these provisions can it be inferred that Congress intended to permit the carriers in such proceedings to set aside the whole valuation on the ground that it was not applicable to the particular purpose for which it was being used.

The decision of the Commission in the *San Pedro, Los Angeles and Salt Lake Railroad Company* valuation, supra, in determining that by reason of Section 15a its single sum valuation under Section 19a must be a "value for rate-making purposes" eventually came before the federal courts in *Los Angeles & Salt Lake Railway Company* v. *United States,* 8 Fed. (2nd) (D. C. Cal.) 747. The court held that the valuation under Section 19a must be a value susceptible of use for any purpose and that the Commission had no authority to find that the property of a carrier has different values for different purposes. As the Court said at pp. 756, 757:

> "In no place in any of the statutes bearing upon the question do we find even an implication of any authority on the part of the Commission to find that any of the property of any common carrier used in its transportation business has two kinds of value. It is the true actual value of such property, and that only, as we think, that the statutes in question authorize and require the Interstate Commerce Commission to ascertain and fix, and that, it is obvious, it has not done.
>
> "By the well-established 'law of the land' public bodies, charged with the duty of fixing rates to be charged by corporations or individuals for the furnish-

ing of water to the public for irrigation, domestic, or other useful purposes, are required to investigate, ascertain, and determine, as a basis for the rates authorized to be charged therefor, the true actual value of the property used in such business at the time the rates are authorized to be charged. It was so decided by the Circuit Court of the United States for the Southern District of California in the case of *San Diego Land & Town Co.* v. *City of National City,* 74 Fed. 79, and *San Diego Land & Town Co.* v. *Jasper,* 110 Fed. 702, respectively affirmed by the Supreme Court of the United States in 174 U. S. 739, 19 S. Ct. 804, 43 L. Ed. 1154, and 189 U. S. 439, 23 S. Ct. 571, 47 L. Ed. 892. That remains a part of the 'law of the land'."

and at p. 757:

"Congress not only in effect approved and made applicable to the Interstate Commerce Commission that law, by in express terms declaring that the action of the said Interstate Commerce Commission, in ascertaining and fixing the value of the property of the transportation companies as a basis for the fixing of rates to be charged by them should be governed by the law of the land, but by further expressly declaring as has been seen, that the said Commission should fix its value, *not for any one particular purpose,* but its *value;* that is to say, its real value at the time of the fixing of the rates authorized to be charged for such service." (Italics ours.)

In *Kansas City Southern Railway Company* v. *United States,* 19 Fed. (2nd) (D. C. Mo.) 591, the court specifically rejected the Commission's standard method of valuing the property "for rate-making purposes," saying at p. 598:

"The final valuation by order of March 4, 1924, was fixed at $49,016,268, and such value was limited to a

> valuation 'for rate-making purposes.' The Commission had no right thus to restrict a valuation which, when finally made, was designed to become *prima facie* evidence 'in all proceedings under the Act to Regulate Commerce . . . in all judicial proceedings for the enforcement of the act . . . and in all judicial proceedings brought to enjoin, set aside or suspend in whole or in part any order of the Interstate Commerce Commission.' The congressional purpose was for an ascertainment and report on the true value of the properties of the carrier."

Both of these cases were subsequently reversed, the former in 273 U. S. 299 and the latter in 275 U. S. 500, but solely upon the ground that as the final valuation is not an "order" of the Commission within the meaning of the Urgent Deficiencies Act the courts have no jurisdiction to review it upon a bill in equity brought under the provisions thereof, a point to which more particular reference will hereinafter be made. To the same effect is the language of the Court of Appeals of the District of Columbia in the case at bar (Record p. 651):

> "It is apparent, therefore, that the establishment of a base for the fixing of rates is merely one of a number of objectives to be obtained through this valuation. Nowhere in the act is there anything that either expressly or by inference can be distorted into the limitation of this valuation for rate-making purposes. The statute on the contrary provides that it shall be a valuation of all the property of the railway company."

Section 19a contemplates but one valuation and that valuation is to be used for various purposes involving the individual properties of each carrier as against those of other carriers. There is a strong presumption that in view of

these new uses for the valuations Congress in enacting the Transportation Act did not intend to deprive the carriers of any rights they had under the Valuation Act and the law of the land to have all their properties, whether physical or incorporeal, included in the valuation. An arbitrary rule which denies to a carrier any valuation for property rights admitted in the Report to be "valuable and essential to the operation of its properties as a whole", "a valuable asset", valued by the Carrier at $55,490.531 and $17,802,000 respectively, should have been abandoned by the Commission when the individual interests of the carriers became apparent under the amendments introduced by the Transportation Act.

B. *Valuation of incorporeal property is essential even in rate making by groups*

Section 15a (2) requires the Commission to initiate, modify, establish or adjust rates

> "so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will"

earn an aggregate annual net railway operating income equal, as near as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

For purposes of this section the Commission, as alleged in the petition and admitted in the answer, has recognized the New England territory, which includes the entire system of the Carrier, as a separate rate group from what is known as Trunk Line territory, which includes the New York Central. The Commission has held for this purpose

> "New England should be deemed to include all points in the New England States and all points in the State of New York served directly by one or more of the follow-

ing carriers: . . . New York, New Haven and Hartford"

Eastern Class-Rate Investigation, 164 I. C. C. 314 at 405, decided May 13, 1930. Rates for New England territory, thus defined to include New York points, are based on property of New England carriers in New England and at those points. Accordingly rates to be charged by the New Haven for service into New York are required to yield a fair return on all the property of that carrier including property along its entrance into New York City. To assign any of that property to the Central would result in disparity of rates between New England and Trunk Line territory.

C. *The deduction of joint facility rents does not affect the question of valuation*

As an indirect measure of compensation to the Carrier for being deprived of any valuation on its property interest in the tracks and terminals, the Commission considers that the Carrier is adequately protected because the rent which it has to pay for the use of those tracks and terminals is deductible as an operating expense in computing its "net railway operating income" for the purpose of determining whether it is earning a fair return. In its Report the Commission says:

"The rent is chargeable to joint-facility rents, which account is described as—

'This account shall include amounts payable accrued as rent for tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies or individuals, and in the joint use of which the accounting company participates.'

"This account is taken into consideration when computing the 'net railway operating income' under Section 15a of the act. In this same section it is provided that

> the final value which we find under Section 19a shall be deemed the value for the purpose of determining the aggregate value of the property. To report this property for the purpose of rate-making either as property owned and used or used but not owned by the carrier would result in a duplication." (Record, p. 66.)

Subdivision (2) of Section 15a requires the establishment of such rates that carriers as a whole or by groups will arn a "net railway operating income" equal as nearly as may be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation and subdivision (1) defines "net railway operating income" as railway operating income

> "including in the computation thereof debits and credits arising from equipment rents and joint facility rents."

If the deduction is required, then the value placed on the property rights for which the rentals are paid should be reduced by the value of the obligation to pay them. This, however, bears only on the quantum of value to be placed on the property rights and in no sense justifies a refusal to find what that value is. That the rights are "valuable" is admitted in the report. The right to run trains over the twelve mile stretch from Woodlawn to Forty-third Street affords an entrance into the heart of New York City and the right to use the Grand Central Terminal and South Station, at the termini of what is one of the most important and intensively used passenger routes in the country, are of immense value to any railroad company far in excess of the rentals, in the case of the terminals simply a proportion of interest and the cost of maintenance, which have to be paid. That value over and above those rentals attaches to these perpetual property rights owned by the Carrier and cannot be disregarded in any determination of the actual fair value of its property. It is true that property is not to be valued "for railroad pur-

poses," that is to say, it is not to be given any different value from its actual value by reason of the fact that a railroad company may condemn it, but nevertheless if property has a special adaptability for railroad purposes that is to be taken into consideration in determining its actual value. As Mr. Justice Hughes said in the *Minnesota Rate Cases*, 230 U. S. 352, in setting aside a valuation designated as the "railway value" of the property as distinguished from its commercial value, at p. 451:

> "If, in the case of any such owner, his property had a peculiar value or special adaptation for railroad purposes, that would be an element to be considered."

The value of an easement or lease is the excess of its rental value over rentals which have to be paid therefor. A valuable leasehold is properly and frequently carried on a balance sheet as an asset and at the same time the rent is chargeable as an ordinary operating expense. No different method of accounting was contemplated under Section 15a. The Commission cannot refuse to perform its statutory duty of ascertaining and reporting the value of all the Carrier's property on the ground that the Carrier is adequately compensated therefor through the allowance of this deduction in computing its net railway operating income. Furthermore the Carrier is not thus adequately compensated for if its property interest in the tracks and terminals is "a valuable asset," as the Commission has found, it is because that property interest has a value over and above the burden of the obligation to pay the rentals. The attitude of the Commission indicates a natural tendency on its part to avoid the admittedly difficult task of ascertaining what that value is. It should also be observed that even if the allowance of the deduction of the rentals in computing net railway operating income might be considered a reasonable compensating benefit to the Carrier for purposes of recapture, it is of no benefit

whatever to the Carrier for purposes of consolidation or the issuance of securities involving as they do not the ratio of earnings to property but solely the value of the property itself.

The Carrier, however, takes issue with the contention of the Commission that the rentals paid for the tracks and terminals must be deducted as "joint facility rents" in computing "net railway operating income." Subdivision (1) of Section 15a defines "net railway operating income" to include debits and credits for "joint facility rents" but it does not define "joint facility rents." The definition of "joint facility rents" therefore lies with the Commission through its authority under subdivision (1) of Section 20 to prescribe "a uniform system of accounts, and the manner in which such accounts shall be kept." Pursuant to that authority the Commission in its classification of accounts has defined joint facility rents to include

> "amounts payable accrued as rent for tracks, yards, terminals and other facilities owned or controlled by other carriers, companies or individuals."

This definition on its face would not require the Carrier to charge to that account rentals paid for the tracks from Woodlawn to Forty-third Street or for the Grand Central Terminal for under the agreements of 1848 and 1907 neither the tracks nor the terminal are "owned or controlled" exclusively by others, though the South Station may be said to be controlled by The Boston Terminal Company. Nevertheless the Commission has construed its own definition to require all these rentals to be charged to that account for the report states in so many words

> "The rent is chargeable to joint facility rents".

The Carrier is bound to make its accounts conform to the uniform system prescribed by the Commission and it is solely for that reason that it charges these rentals to "joint

facility rents." Therefore it is within the power of the Commission itself to eliminate any duplication by so modifying its accounting rules that such rentals will no longer be chargeable to "joint facility rents."

The Commission may avoid duplication in this respect either by deducting from the value of the Carrier's rights in the tracks and terminals the value of the obligation to pay rentals therefor or by so modifying the inflexibility of its accounting rules that such rentals will no longer be chargeable to joint facility rents. Instead of adopting either of these alternatives the Commission has arbitrarily excluded from the valuation the entire property rights for which the rentals are paid. Its position is untenable.

IV

Mandamus is the Proper Remedy

The Commission is an administrative board to which Congress under Section 19a has committed the duty of investigating, ascertaining and reporting "the value of all the property owned or used by every common carrier". Congress invested the Commission with no discretion as to what part of a carrier's property should be valued, the Commission must value all of its property. If the Commission has made an erroneous valuation of that property its valuation cannot be reviewed in a mandamus proceeding, but if it has failed or refused to exercise fully the jurisdiction thus conferred upon it mandamus is the proper remedy. The Commission asserts that it did fully exercise its jurisdiction in the premises; that in so doing it had to exercise discretion in interpreting the meaning of the phrase "property owned or used"; that the Carrier has shown at the most a mere error of interpretation as distinguished from a breach of duty; and that the granting of the writ would determine a question of title between two carriers, one of which is not a party to this proceeding.

A. *The Commission has not fully exercised its jurisdiction*

The Commission did take jurisdiction over the valuation of the Carrier's property, but it did not fully exercise that jurisdiction. It made a valuation of all the physical property along the line, but not of all the property of this Carrier. It defends its position by the specious reasoning that taking all the valuations together, when completed, it will have inventoried "all the property owned or used by every common carrier". But that is not all that Congress intended the Commission to do, nor is it all that the Commission itself set out to do and purports to have done. Its order reads as follows:

> "That the following be, and it is hereby declared to be, the final valuation of the properties of The New York, New Haven and Hartford Railroad Company. . . ." (Record, p. 75.)

That valuation is incomplete. The Commission purports to have valued all the properties of this Carrier, but has not done so. That was not a mere error in determining the value of the properties which were valued, but a failure, a frank refusal, to value part of those properties at all, though finding the excluded properties to be valuable, "a valuable asset". It refused to perform its statutory duty in respect of the property in question, its jurisdiction has not been fully exercised. The remedy by mandamus is always available to compel a public officer or administrative board to exercise jurisdiction and it is no defense that the officer or board has misunderstood the law in this respect. This rule was applied to this very Commission in *Interstate Commerce Commission* v. *Humboldt Steamship Company,* 224 U. S. 474, at 484:

> "The Interstate Commerce Commission is purely an administrative body. It is true it may exercise and must exercise *quasi* judicial duties, but its functions

> are defined and, in the main, explicitly directed by the act creating it . . . It may exercise judgment and discretion, and, it may be, cannot be controlled in either. But if it absolutely refuse to act, deny its power, from a misunderstanding of the law, it cannot be said to exercise discretion."

The Commission in its Report did review the history of the Carrier's rights in the tracks and terminals, pointed out certain features such as the lack of capital investment by the New Haven and analyzed the provisions of the instruments, but it reached no conclusion as to the legal status of those rights as estates in property. Nor did the Commission decide that they were not "property", but only that being incorporeal property they would not be valued "for rate-making purposes".

B. *The Commission had no discretion in respect of its duty*

The Commission makes much of the point that in ascertaining and reporting the value of the property owned or used by the Carrier it had to interpret the phrase "property owned or used" and that its interpretation if erroneous was mere error of law. Doubtless the Commission in the performance of its duties had to interpret the language of the Act, but where the interpretation involved a determination of its duty in respect of what property should be valued its failure to interpret its duty correctly is no defense to a writ of mandamus to compel the performance of that duty. If a statute invests a public officer with discretion as to what he shall do, mandamus does not lie to compel him to exercise that discretion in a particular way. If, however, the statute, instead of investing him with discretion to determine what he shall do, directs that he shall do certain things, his erroneous interpretation of the meaning of the statute will not protect him from a writ of mandamus commanding him to perform his duty according to the true

meaning of the statute. This distinction has been laid down in the leading case of *Roberts* v. *United States,* 176 U. S. 221 at 231, cited with approval in *Wilbur* v. *Krushnic,* 280 U. S. 306, in the following apt language:

> "Every statute to some extent requires construction by the public officer whose duties may be defined therein. Such officer must read the law, and he must therefore, in a certain sense, construe it, in order to form a judgment from its language what duty he is directed by the statute to perform. But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired. Every executive officer whose duty is plainly devolved upon him by statute might refuse to perform it, and when his refusal is brought before the Court he might successfully plead that the performance of the duty involved the construction of a statute by him, and therefore it was not ministerial, and the court would on that account be powerless to give relief. Such a limitation of the powers of the court, we think, would be most unfortunate, as it would relieve from judicial supervision all executive officers in the performance of their duties, whenever they should plead that the duty required of them arose upon the construction of a statute, no matter how plain its language, nor how plainly they violated their duty in refusing to perform the act required."

The same rule applies to administrative boards as shown by the extract quoted above from *Interstate Commerce Com-*

mission v. *Humboldt Steamship Company,* supra. The Commission may be compelled by mandamus to perform its statutory duty even though its failure to do so has been based on a misinterpretation of the intention of Congress as expressed in the Act.

C. *The Commission's non-action was not an error of valuation but a breach of duty*

The gist of the Commission's argument is that the Carrier is attempting to have the Court "set aside, annul and suspend the final valuation." That is the phraseology used in the act of June 18, 1910, c. 309, 36 Stat. L. 539, creating the Commerce Court with jurisdiction in equity over "cases brought to enjoin, annul or suspend in whole or in part any order of the Interstate Commerce Commission," this jurisdiction having been later transferred to the district courts by the so-called Urgent Deficiencies Act of October 22, 1913, 38 Stat. L. 208, 219, 220, abolishing the Commerce Court. This Court has held that as a final valuation under Section 19a does not require any action by a carrier it is not an "order" within the meaning of that phraseology and therefore cannot be reviewed upon a bill in equity under the Urgent Deficiencies Act and that as it is a report of an investigation which is merely *prima facie* evidence in proceedings it cannot be reviewed under the general equity jurisdiction of the court. *United States* v. *Los Angeles & Salt Lake Railroad Company,* 273 U. S. 299. The effect of that decision is to deny to the carriers any review of *errors of valuation* made by the Commission until the Commission attempts to make use of the final valuation in some proceeding and then, as this Court said at p. 314:

> "Its conclusions, if erroneous in law, may be disregarded."

In that same case, however, this Court distinguished between an error of valuation and a *breach of duty* by the Commission, saying further at p. 310:

> "In directing the Commission to investigate the value of the property of the several carriers, Congress prescribed in detail the subjects on which findings should be made, and constituted the 'final valuations' and 'the classification thereof' *prima facie* evidence, in controversies under the Act to Regulate Commerce. Every party in interest is, therefore, entitled to have and to use this evidence; and the carrier, being a party in interest, has the remedy by mandamus to compel the Commission to make a finding on each of the subjects specifically prescribed. *Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission,* 252 U. S. 178."

One subject specifically prescribed by Section 19a is the "value of all the property owned or used" by every carrier and accordingly mandamus is the remedy to compel a finding of value for *all* the property so owned or used.

In *Kansas City Southern Railway Company* v. *Interstate Commerce Commission,* 252 U. S. 178, the Commission completed a tentative valuation of the property and gave notice thereof to the carrier. The carrier thereupon filed a protest against such valuation on the ground that in making it the Commission had failed to consider and include "the present cost of condemnation and damages or of purchase in excess of such original cost or present value." The Commission decided that it would not "report the reproduction cost of such land, the present cost of acquisition and damages or of purchase in excess of present value" because of the impossibility of ascertaining the same. The carrier then brought a petition for "mandamus to compel the Commission to hear the proof and act upon it under the statute." The Commission answered that it was impossible to ascertain such values and that consequently it had refused to hear further evi-

dence and had made no report on the subject. The Supreme Court of the District of Columbia dismissed the petition without opinion and the Court of Appeals also without opinion affirmed this judgment. In reversing these judgments and directing the issuance of the writ this Court said at p. 187:

> "It is obvious from the statement we have made, as well as from the character of the remedy invoked, mandamus, that we are required to decide, not a controversy growing out of duty performed under the statute, but one solely involving an alleged refusal to discharge duties which the statute exacts. Admonishing, as this does, that the issue before us is confined to a consideration of the face of the statute and the non-action of the Commission in a matter purely ministerial, it serves also to furnish a ready solution of the question to be decided, since it brings out in bold contrast the direct and express command of the statute to the Commission, to act concerning the subject in hand, and the Commission's unequivocal refusal to obey such command.
>
> "It is true that the Commission held that its non-action was caused by the fact that the command of the statute involved a consideration by it of matters 'beyond the possibility of rational determination' and called for 'inadmissible assumptions,' and the indulging in 'impossible hypotheses' as to subjects 'incapable of rational ascertainment,' and that such conclusions were the necessary consequence of the *Minnesota Rate Cases*, 230 U. S. 352.
>
> "We are of opinion, however, that, considering the face of the statute and the reasoning of the Commission, it results that the conclusion of the Commission was erroneous, an error which was exclusively caused by a mistaken conception by the Commission of its relation to the subject, resulting in an unconscious dis-

regard on its part of the power of Congress and an unwitting assumption by the Commission of authority which it did not possess. And the significance which the Commission attributed to the ruling in the *Minnesota Rate Cases,* even upon the assumption that its view of the ruling in those cases was not a mistaken one, but illustrates in a different form the disregard of the power of Congress which we have just pointed out, since, as Congress indisputably had the authority to impose upon the Commission the duty in question, it is impossible to conceive how the *Minnesota Rate* ruling could furnish ground for refusing to carry out the commands of Congress, the cogency of which consideration is none the less manifest though it be borne in mind that the *Minnesota Rate Cases* were decided after the passage of the act in question.

"Finally, even if it be further conceded that the subject-matter of the valuations in question which the act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the act of Congress, or what is equivalent thereto, of exerting the general power which the act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise."

The case at bar presents the same duty "on the face of the statute," the same "non-action" by the Commission and the same defense by the Commission, namely the practical burdens which it foresees if it undertakes to perform its duty if interpreted in accordance with the Carrier's contention.

That case was identical with the instant case. The same paragraphs of the Act are involved. In that case the Com-

mission failed to obey the command of the Act contained in the *last* clause of subdivision Second quoted by the Court. In the instant case the Commission failed to obey the command of the *first* clause of subdivision Second. In that case the command was to include in its valuation and to state in detail certain kinds of value, to wit: "the present cost of condemnation and damages or of purchase in excess of such original cost or present value" of the properties of the carrier. In the instant case the command was to include in its valuation and to state in detail the value of certain kinds of property, to wit: "all lands, rights of way, and terminals owned or used for the purposes of a common carrier" of the Carrier. In that case it refused to include the kinds of values designated, in the instant case it refused to include the kinds of properties designated. In that case this Court held that such refusal was a violation of statutory duty and granted the writ of mandamus. In the instant case there was equally a violation of statutory duty. The Commission not only refused to include in its valuation or to report in detail the designated values of these "rights of way and terminals," but further refused to determine whether or not the Carrier did have an ownership in those rights of way and terminals and the reason assigned for its refusal was that it was making a special and restricted kind of valuation, a rate base, a kind of valuation which the Carrier claims the Act did not authorize.

The Commission asserts that the decision of the Court of Appeals of the District of Columbia in the case at bar is in conflict with its earlier decision in *Kansas City Southern Railway Company* v. *Interstate Commerce Commission,* 6 Fed. (2nd) 692. It is not clear to us what importance is to be attached to that point now that this case is before this Court unless it be fact that the earlier case was also brought here on certiorari, which was denied without opinion in 269 U. S. 570. Certiorari may have been denied for many reasons collateral to the issues raised here and its denial

represents no decision by this Court on the merits. As the Court of Appeals considered and distinguished its earlier decision, however, and as the distinction is perfectly sound, it seems desirable to consider the questions which were there presented.

In that case the carrier alleged that the Commission did not find "the economic or exchange value" of its property because in finding its value for rate-making purposes it *failed to give weight* to the earning power, productivity, favorable location, present value, present and prospective volume of tributary traffic, low operating costs and good will. But the report, which was made a part of the petition, stated that the Commission had, in arriving at its valuation, considered "the estimate by the carriers of the commercial or economic value of the property," and in referring to this as well as other evidence of value said: "These are checks, one upon the other. No one fact, cost study, estimate, or other factor, can be said to be necessarily controlling." The real complaint of the carrier in respect of that part of the case was not that the Commission in making its valuation for rate-making purposes had not endeavored to ascertain the economic or exchange value of the property, but that it had not accepted the carrier's estimate of that value.

Among the many points of attack made by the carrier against the valuation, however, was that the Commission had failed to find the value of the carrier's interest in the Kansas City Terminal Railway Company, the Joplin Union Depot Company and the K. C. S. Elevator Company, three entirely separate corporations. The facts as to the relations between the railroad companies and these three corporations are not stated in the opinion of the court, but they appear in the valuation report, 75 I. C. C. 223, at 234, 235. The carrier owned the capital stock of the Terminal Railway Company and of the Depot Company jointly with other carriers and owned the entire capital stock of the Elevator Company. Operating and maintenance expenses

were shared by the several carriers on a wheelage basis, the Commission in its brief says under 200 year contracts although we have not found it so stated in the report. The Commission valued their respective properties to the three corporations in their separate valuation reports, including only the capital stock in the carrier's valuation report. The relations between the carrier and the three corporations were perhaps analogous to that between the New Haven and The Boston Terminal Company, though without the important statutory provisions of the Massachusetts legislation requiring the railroad companies to use the terminal property and deeming them to be the "owners" thereof for certain purposes. They bore no resemblance whatever to the interest which the New Haven has in the tracks from Woodlawn to Forty-third Street and the Grand Central Terminal. Furthermore the report of the Commission discloses that the Commission acted on the issue of the nature of the carrier's rights and did not refuse to determine that question. For example, in respect of the Elevator Company, the report stated:

> "The property is neither owned nor used by the carrier, and for this reason has no place in the carrier's valuation."

In other words, whether the Commission was right or not, it did take action and if that action was wrong it was not a breach of duty but an error of valuation.

A casual reading of this second *Kansas City Southern* case without examining the Commission's report might give the impression that the issues were the same as those raised here, but the foregoing quotations from the report make clear the distinction between them. In that case the Commission had considered the legal status of the rights claimed by the carrier and ruled that the carrier neither owned nor used the property. If the ruling was wrong it was an error of law for the correction of which mandamus is not the

proper remedy. In the case at bar the Commission refused to decide the legal status of the carrier's rights. Nowhere in this Report did the Commission rule or say that those rights were not "property owned or used," within the meaning of the Act or otherwise. The Commission arbitrarily excluded those rights solely because it was making a valuation "for rate-making purposes."

In so doing the Commission was exercising its supposed authority to determine for itself what shall constitute the rate base instead of accepting as the rate base the actual fair value of all the common carrier property. Indeed the Commission excluded the properties in question owned and used by the Carrier, and refused to determine whether or not they were so owned, though admitting that they were "rights . . . valuable and essential to the operation of its property as a whole," a "valuable asset," for the very reason that they were not finding the actual fair value of all the common carrier property, but a different kind of value, a rate base. If that conclusion is erroneous, the error lies in the Commission's misconception of its duty under the Act, for which mandamus is the proper remedy. The one most vital question in the valuations made to date is whether the Commission is authorized to determine what shall constitute the rate base under Section 15a or is required to accept as that rate base the actual fair value, or as it is sometimes termed, the economic or exchange value, determined by the methods prescribed in Section 19a, of so much of the "property owned or used" by the carrier as is "held for and used in the service of transportation." That question was not presented in the second *Kansas City Southern* case because the terminals were not excluded on that ground, but it is presented here and it is necessarily a question of statutory duty.

The Commission alleges in its answer that the Carrier has no property interest in the tracks or terminals, but only a

license to use them. The question was presented to the Commission for decision in the valuation proceedings, but it was not decided because the Commission, misconceiving its duty as to "value for rate-making purposes," found it unnecessary to do so. The report does not show whether the Carrier has a property interest in these tracks and terminals or not and in that respect is incomplete. The Commission cannot complete its incomplete report by its answer to this petition. If the Court should hold that the Carrier had no interest in the tracks and terminals the report would still be incomplete. It is not an error of decision, but an absence of decision, of which the Carrier complains.

D. *Title of other carriers is not involved*

The argument of the Commission that the granting of the writ in this case will determine a question of title between the New Haven and the Harlem, or the Central as lessee, which is not a party to these proceedings, requires but passing reference. As already shown herein this Court is not asked to decide a question of "title to property," the title to the rights in question being admittedly in the New Haven. The pertinent statutes, agreements, leases and other documents relating thereto were introduced in evidence before the Commission and at the hearing before the Supreme Court of the District of Columbia and no question was raised as to their authenticity. The Report of the final valuation annexed to the petition shows that the Commission accepted this evidence as establishing valuable rights belonging to the New Haven and the burden of the Carrier's complaint in this proceeding is that the Commission refused to ascertain what that value was. Whether the Harlem and the Central are necessary parties depends on whether the relief prayed for if granted would affect their rights. *Waterman* v. *Canal-Louisiana Bank,* 215 U. S. 33. The Commission has already found that the New Haven has "valuable"

rights and the relief prayed for if granted will be an order directing the Commission to determine the value of those rights. That order will in no way determine or affect the title. The other carriers are strangers to this petition which involves the question of the duty of the Commission in respect of the valuation of the New Haven's rights, a question solely between the Commission and the New Haven. The New Haven was not heard when the Commission in the Central's valuation assigned the entire value of the property to that carrier, nor is the Central entitled to be heard in this proceeding where the New Haven seeks to get part of it back. If in compliance with a writ of mandamus from this court the Commission shall place a value on the Carrier's rights the Commission may also decide to revalue the terminal properties inventoried to the Central because of the fact that they are subject to those rights, but the order of this Court on this petition will not direct the Commission to do so. The Central will have full opportunity to be heard before the Commission and the courts if and when such revaluation shall be undertaken and nothing to be decided by this Court on this petition will be *res judicata* or otherwise prejudicial to the Central in any judicial proceedings it may see fit to institute.

Conclusion.

Mandamus is the proper remedy for breach of duty by the Commission, but the granting of the writ is discretionary. Before exercising its discretion the Court should be satisfied that the Carrier has valuable property rights which warrant protection by such peremptory relief. For that reason the Carrier introduced in evidence the statutes, leases and agreements upon which it claims a freehold estate, an ownership in fee in the tracks and terminals, admitted by the Commission to be "rights . . . valuable and essential to the operation of its property as a whole,"

a "valuable asset," and valued by the Carrier at the enormous sum of $55,490,531 for its rights in the New York property and $17,802,000 for its rights in the Boston property. The Court of Appeals of the District of Columbia was satisfied that the Supreme Court of the District should have granted the writ ordering the Commission to complete its Report by ascertaining and reporting the value of the Carrier's property rights in the tracks and terminals in question. The decision should be affirmed.

Respectfully submitted,

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APPENDIX

Section 19a of the Interstate Commerce Act

The material provisions of Section 19a of the Interstate Commerce Act as amended are as follows:

(a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be neeessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

* * * * * * * *

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investi-

gation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this Act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this Act shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Upon the completion of the valuation herein provided for the Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the

property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

* * * * * * * *

(h) Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein stated, and before such valuation shall become final, the Commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification

thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

(j) If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall report its action thereof to said court within the time fixed by the court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

Section 15a of the Interstate Commerce Act

The material provisions of Section 15a of the Interstate Commerce Act are as follows:

(1) When used in this section the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices, relating thereto; the term "carrier" means a carrier by railroad or partly by railroad and partly by water, within the continental United States, subject to this Act, * * * and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due

consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: * * *.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair re-

turn, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. * * * The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

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DEC 15
CHARLES ELMORE

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In the

Supreme Court of the United States

October Term, 1931

No. [redacted] 15

Interstate Commerce Commission
Petitioner

v.

The New York, New Haven and Hartford Railroad Company, Old Colony Railroad Company, Boston and Providence Railroad Corporation (Massachusetts), Boston and Providence Railroad Corporation (Rhode Island), Providence, Warren and Bristol Railroad Company, Harlem River and Port Chester Railroad Company, Holyoke and Westfield Railroad Company, Providence and Worcester Railroad Company, Chatham Railroad Company, and Norwich and Worcester Railroad Company
Respondents

Respondents' Petition for Rehearing

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In the

Supreme Court of the United States

OCTOBER TERM, 1931

No. 773

INTERSTATE COMMERCE COMMISSION

PETITIONER

v.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.

RESPONDENTS

RESPONDENTS' PETITION FOR REHEARING

This case was brought before this Court upon a writ of certiorari to the Court of Appeals of the District of Columbia, which had reversed a judgment of the Supreme Court of the District of Columbia denying a petition for mandamus to compel the Interstate Commerce Commission, hereinafter referred to as the Commission, to correct its final valuation under Section 19a of the Interstate Commerce Act of the properties of The New York, New Haven & Hartford Railroad Company and its controlled or leased lines, hereinafter referred to as the Carrier, by ascertaining and reporting the value of the Carrier's rights in certain tracks from Woodlawn to Forty-third Street and in the Grand Central Terminal in New York City and in the South Station in Boston. The judgment of the Court of Appeals was reversed and that of the Supreme Court affirmed by a judgment of this Court entered on November 21, 1932. The Chief Justice and Mr. Justice Butler took no part in the consideration and decision of this case and Mr. Justice Van Devanter, Mr. Justice McReynolds and Mr. Justice Suther-

land were unable to concur in the decision. The decision, therefore, was rendered by a minority of the full Court, Mr. Justice Cardozo delivering the opinion.

The decision was put distinctly on the ground that the remedy by mandamus was not available and the question whether the Carrier's interests in the tracks and terminals should have been given a specific valuation was expressly not determined, as stated in the concluding paragraph of the opinion:

> "Mr. Justice Van Devanter, Mr. Justice McReynolds and Mr. Justice Sutherland are unable to concur in this decision. But, as the decision is put distinctly on the ground that the specific duty sought to be enforced by mandamus is not so definitely and plainly described by the statute as to justify the application of that remedy, and the question whether the inventory in controversy, omitting a specific valuation of important rights and interests, gives full or adequate effect to the intent of the statute, is not determined but distinctly reserved for future contestations, they deem it sufficient to say at this time that they regard the reasons assigned by the Court of Appeals for its judgment as sound and requiring an affirmance of its judgment."

Nevertheless in the course of the opinion the Court reviewed at great length the method of valuation adopted by the Commission in language which can hardly fail to affect the consideration of that question adversely to the Carrier's position in future contestations before the Commission and other courts. In full and sincere recognition of the learned and exhaustive consideration given the case, manifest upon the face of the opinion, the possibility of a modification of this notably close decision upon rehearing is respectfully offered as a justification for this petition.

The Carrier petitions the Court for a rehearing under Rule 33 for the reasons hereinafter set forth:

1. In discussing obiter *the method of valuation adopted by the Commission, the Court has expressed views prejudicial to the Carrier upon an important question of valuation which was not in issue in this case.*

The Commission in its report on the final valuation had said of the tracks from Woodlawn to Forty-third Street (Record, p. 64):

> "In our finding of value of the property owned or used in common carrier service for rate-making purposes, we are of the opinion that no specific sum should be found for the carrier's right to use these tracks. It is therefore not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right. We do recognize that the advantages to the carrier of these rights are valuable and essential to the operation of its property as a whole. Nevertheless, for the purpose of finding a rate base, it is distinguished only by its magnitude from the many other similar rights of carriers to the joint use of property wholly owned by other carriers"—

and of the Grand Central Terminal (Record, p. 66):

> "The right to use these extensive terminal facilities is a commercially valuable contract right owned by the carrier, and this joint use thereof is also a valuable asset to the owning company. But for the purpose of ascertaining the value, for rate-making purposes, of the carrier's property owned or used in common carrier service, no specific value will be reported for the right of the carrier to the use of this property."

Those summary extracts from the report make it plain that this Court had before them two, and only two, questions: (1) Whether the Commission was required to report a specific value for these admittedly valuable rights; and (2)

Was mandamus the proper remedy? Having reached the conclusion that mandamus was not the proper remedy, the Court was not called upon to discuss the question whether these rights, constituting, as the Carrier contended, an interest or estate in the physical property itself, were entitled to a specific valuation. The Court, nevertheless, in a decision rendered by a minority of the justices, expressed their views *obiter* not only upon one of the questions before them, but also upon a most important question which was not before them at all. They did not confine themselves to the question whether the Commission was required to report a specific value for the Carrier's rights in the tracks and terminals, but dealt with the further question of how that value should be ascertained, and in so doing went beyond any issue in this case.

In the opinion the Court speaks constantly and with approval of the "method of appraisal" adopted by the Commission and purport to reject the method which the Carrier presented to the Commission for ascertaining the value of its rights in the tracks and terminals:

> "Plainly untenable is its contention that the amount to be allowed to it is the proportion of the cost value of the property that would result from a division of such value between itself and the Central in the ratio of use" (Opinion, p. 9).

The Court then proceeded with an elaborate analysis of the proper method of valuing leaseholds and similar interests. They plainly indicate their own view that the Carrier is not entitled to have any part of the physical property valued to it for the reason that it "has not invested anything in the roadbed or the terminals" and "is not affected for good or ill by fluctuations in the cost of building them anew." They say that, because the Carrier pays substantial rentals for its perpetual easement and lease, its claim for a proportion of the value of the physical property itself "treats

as an investment what is merely a contingent debt." They state categorically that "the value for the New Haven is not the value of the thing or piece of property owned or used, or of any fractional interest therein," but only "the value of the use," and even go into the evidence of value which the Carrier laid before the Commission, saying:

> "It took its stand upon the position that *pro tanto,* in proportion to its use, it was the owner of the fee."

The Carrier claims that its perpetual easement in the tracks and its perpetual lease of an undivided half of the terminal, equivalent to a base fee, were not mere contract rights of use, but estates in the physical property itself, and that, if the Commission, as the Commission itself claims, is making only a "physical valuation," it cannot disregard this "fractional interest therein" and that question was before the Court. But whether that value should be determined on the theory presented by the Carrier to the Commission, that is to say, a percentage of the total value of the property "in proportion to its use," or whether it should be determined by some other method, such as taking into consideration the rental payments which it has to make, was not a question in this case. The view expressed in the opinion that the New Haven is not entitled to any part of the "cost" of the property, by which presumably the Court meant the reproduction cost or value of the physical property, because it had no investment therein is challenged by the Carrier in that there is no relation whatever between investment and value and as being a recurrence to the prudent investment theory set forth in the dissenting opinion of Mr. Justice Brandeis in *Southwestern Bell Telephone Co.* v. *Public Service Commission,* 262 U.S. 276, 289, which has not hitherto been accepted by this Court. Even if the Commission is authorized to limit its valuation to rate making purposes, which the Carrier does not concede, the public served are concerned only with the value of the property employed

in the service irrespective of what the operating carrier pays for its use.

Now this question of how the value of the Carrier's rights should be ascertained is bound to be raised in future proceedings involving this final valuation, and the expressions of this controlling and distinguished tribunal will necessarily influence the Commission and other courts in reaching their conclusions. As this question was not in issue in this case, was not argued by counsel on either side and only incidentally mentioned in the briefs, the Carrier asks for a rehearing at which it may be adequately presented and considered.

It is possible that in lieu of granting a rehearing the Court might prefer to adopt the alternative suggested by *Donnelly* v. *United States*, 228 U.S. 708, 711, where they recalled certain parts of the opinion relating to an issue which was not presented, although the petition for rehearing was denied on the ground that no useful purpose would be served by further argument. The following remarks by Mr. Justice Pitney seem peculiarly applicable to the present case:

> "The state of the record, therefore, did not entitle the plaintiff in error to call upon this court to decide the merits of the question of the navigability of the river and its effect upon the jurisdiction of the Circuit Court over the homicide. In discussing the merits we assumed (in favor of plaintiff in error) that the question was raised by the record. But since it is now suggested that in so doing we have passed upon a question that was not adequately argued, and which in its consequences involves important interests, other than those of the plaintiff in error, we prefer to and do recall so much of the opinion as holds that . . ."

2. The record contains nothing to support the Court's inference that the value of the Carrier's rights in the tracks and terminals was reflected in the final valuation.

The Court inferred that although the Commission expressly stated that no specific sum should be found for the Carrier's rights in the tracks and terminals, nevertheless their value must be deemed to have been reflected in the final single-sum valuation. In the language of the opinion (Opinion, p. 15):

> "Every trackage contract and every terminal use, in so far as it contributes to the unity of the system, is reflected in the final value ascribed to the physical things that are listed in the inventory"—

in support of which the Court quoted the following generalization from the report:

> "'We have given careful consideration' said the Commission, 'to all facts of record and pertaining to the value of the common carrier property of the Carrier as an organized, developed, well maintained, seasoned property in operation as a going concern'. Many diverse elements, reacting one upon the other, have been fused in an act of judgment drawing its sustenance from all.'"

Some such general conclusion is common in all the valuation reports, and if the Commission's mere statement that it has considered everything the statute requires it to consider is to preclude judicial inquiry into the question, the carriers must submit without remedy to its economic theories. Such comprehensive effect was not accorded to the generalizations of the Commission in *St. Louis & O'Fallon Railway Co.* v. *United States*, 279 U.S. 461, where the Court found that the Commission had not given due consideration

to reproduction cost in spite of the following statement in its report:

> "The statute directs that in determining values pursuant to Section 15a we shall 'give due consideration to all the elements of value recognized by the law of the land for rate-making purposes'. In the method of valuation which we have followed in this proceeding we have endeavored to give heed to this direction. . . ."

In his dissenting opinion in that case Mr. Justice Brandeis relied upon that and similar statements in the report, saying, at p. 543:

> "It states that 'it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the carrier' as well as the evidence otherwise introduced; and that 'from this accumulation of information we have formed our judgments as to the fair basic single-sum values, not by the use of any formula but after consideration of all relevant facts' "—

but his view did not prevail.

The Court in the present case indicates that the Carrier's rights in the tracks and terminals may have been considered broadly under going-concern value. Apart from the Commission's general statement referred to above, it does not appear in the report that they were so considered. The Court say (Opinion, p. 8):

> "At one point or another a line of division has to be drawn between the property to go in and the property to stay out."

The Carrier, in brief and argument, did not, as the opinion would indicate, draw the line at any particular point or concede that even a license might not be entitled to separate

valuation, but having, as it claimed, estates in the physical property itself, it contended that those estates certainly were "property to go in," whatever might be true of licenses, contracts and lesser rights. The Commission found they were "property to stay out" and made no claim that their value had been ascertained and reported.

The Court lay great stress upon the fact that during nineteen years the Commission has steadfastly adhered to this method of valuing jointly used property (Opinion, p. 6) and that in only one instance has it been "challenged in the Courts." The procedural difficulties resulting from the decision in *United States* v. *Los Angeles & Salt Lake Railroad Co.*, 273 U.S. 299, have discouraged the carriers from challenging this method of valuation in the courts, but it seems only fair to say that they have frequently challenged, and never acquiesced in, this method in proceedings before the Commission. An administrative practice of the Commission inconsistent with the law of the land should obtain no sanction by virtue of its antiquity.

As counsel we certify that this petition is presented in good faith, and not for delay.

JOHN L. HALL,
CHARLES O. PENGRA,
Counsel.

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SUPREME COURT OF THE UNITED STATES.

No. 15.—October Term, 1932.

Interstate Commerce Commission, Petitioner, *vs.* New York, New Haven & Hartford Railroad Company, et al., Repondents.	On Writ of Certiorari to the Court of Appeals of the District of Columbia.

[November 21, 1932.]

Mr. Justice Cardozo delivered the opinion of the Court.

The New York, New Haven & Hartford Railroad Company, and other railroad companies subject to its control, the group making up together the New York, New Haven and Hartford System, and collectively described as "the carrier," petitioned the Supreme Court of the District of Columbia for a writ of mandamus directed to the Interstate Commerce Commission and commanding the Commission to include the value of the carrier's interests in the tracks of the New York and Harlem Railroad Company from Woodlawn to Forty-third Street in the City of New York, in the Grand Central Terminal in that city, and in the land and buildings of the Boston Terminal Company as part of the inventory and valuation required by § 19a of the Interstate Commerce Act. 37 Stat. L. 701, c. 92; 49 U. S. C., § 19a. The Supreme Court of the District dismissed the petition. Its judgment was reversed by the Court of Appeals (55 F. (2d) 1028; 60 App. D. C. 403), and a writ of certiorari brings the case here.

The carrier operates lines of railroad in Massachusetts, Rhode Island, Connecticut and New York. Its tracks enter the state of New York at or near Portchester, and at Woodlawn connect with the tracks of the New York and Harlem Railroad Company, now operated under lease by the New York Central System. From Woodlawn south to the Grand Central Station, a distance of about twelve miles, the carrier's passenger trains run over the Harlem tracks, and the carrier and the Central use the station in common. At Boston, Massachusetts, the carrier's tracks connect with those of the Boston Terminal Company, the owner of the South Station in Boston; and the carrier has the use of that station in common with other lines. The facts bearing upon its interest in the Harlem

tracks and the Grand Central Terminal will be considered first, and afterwards those bearing upon its interest in the terminal at Boston.

On March 17, 1848, an "agreement and contract of transportation" was entered into between the New York and Harlem Railroad Company and the New York and New Haven, a predecessor of the carrier. By this contract, the Harlem granted to the New Haven the right "to run their trains, engines and cars for the transportation of passengers, mails, expresses, freight, etc., over the track or tracks of the road of the New York and Harlaem Railroad Company from the point of junction aforesaid to and into the city of New York." The New Haven was to furnish its own haulage and to pay the Harlem "as full compensation for the use and occupation of their track or tracks as aforesaid, a certain sum for each passenger transported," and a portion of the tariff rates received for the transportation of express matter and the mails. Compensation was to be adjusted every five years by agreement, or in the event of failure to agree, by arbitration. Following the execution of this contract, and on March 29, 1848, the legislature of New York passed an act to amend the charter of the New York and Harlem Railroad Company. In § 6 of that act, it confirmed the validity of the contract with the carrier's predecessor. "The New York and New Haven Railroad Company is hereby authorized to enter upon and run their cars and engines for passengers, freights, mails, expresses and other business, over the road of the New York and Harlem Railroad Company, from the point of junction of the roads of said companies at or near William's Bridge, in the County of Westchester, to the City of New York, and as far into the said city as the said Harlem Railroad may extend, upon such terms, and to such point as has been or may hereafter be agreed upon by and between said companies, a copy of such agreement or agreements to be duly authenticated and filed in the office of the Secretary of State of this state." Promptly upon the enactment of this statute, the New Haven connected its line with the tracks of the Harlem, and ever since that time has run its trains over them into the City of New York. The Harlem on April 1, 1872, leased its road to the New York Central for a term of 401 years, the lease reciting that it was subject to the contract between the Harlem and the New Haven.

From a statement of the facts as to the carrier's interest in the tracks south of Woodlawn we pass to a consideration of its

interest in the Grand Central Terminal. An agreement described as a "tripartite lease" was entered into on November 1, 1872, between the Harlem, the Central and the New Haven whereby the Harlem leased to the other roads the use of certain parts of the Grand Central Depot (a building since then destroyed) and the adjacent yards. On July 24, 1907, this agreement was superseded by another tripartite lease between the same parties. The Central agreed at its sole expense to acquire the lands and make all the changes necessary for the construction of a new station, the present Grand Central Terminal. Acting for itself and the Harlem, it leased to the New Haven during the term of the New Haven's Charter (i. e., in perpetuity) the "use, in common with the Central Company, subject to all the provisions of this agreement, of the said Railroad Terminal for the accommodation of the traffic of the New Haven Company, other than freight traffic," with the proviso that the New Haven's right to the use of the terminal should in no event exceed fifty per cent of the maximum capacity. As "compensation for the premises hereby demised," the New Haven was to pay to the Central that proportion of four and one-quarter per cent interest on the cost of construction and of the annual expenses for maintenance and operation "which the use of the Railroad Terminal by the New Haven Company bears to the entire use thereof." The terminal was to be under the direction of a terminal manager appointed by the presidents of the Central and New Haven Companies and removable by either.

Next in order is a statement of the interest of the carrier in the terminal at Boston. By an act of the Massachusetts legislature, approved June 9, 1896, the Boston Terminal Company was incorporated "with power to construct and maintain a union passenger station in the southerly part of the City of Boston, and to provide and operate adequate terminal facilities for the five railroad companies entering the city and for the accommodation of the public." These railroad companies, including the New Haven, were severally authorized to subscribe for the capital stock in equal amounts. Upon the completion of the proposed improvements, the five railroads were to use the station and its terminal facilities for all their terminal passenger business in Boston, and were to pay to the Terminal Company the amounts necessary to satisfy the expenses of the corporate administration and of the maintenance and operation of the station and other facilities, together with interest

on the bonds and a dividend not to exceed four per cent on the capital stock. The payments by the several roads were to be proportioned to the use, and were to be deemed to be a part of their operating expenses. At the time of the trial, the New Haven, having succeeded to the interests of some of the other roads, held in its ownership or subject to its control eighty per cent of the Terminal stock, the remaining twenty per cent being controlled by the Central.

With this statement of the facts as to the carrier's interests in the tracks and terminals, we reach the question whether the Commission was under a clear duty, enforceable by mandamus, to include those interests with a specific valuation in the statutory inventory.

By § 19a of the Interstate Commerce Act (49 U. S. Code; Act of March 1, 1913, c. 92, 37 Stat. 401, as amended), there is laid upon the Commission the colossal task of preparing an inventory and valuation of the property of the railroads of the United States.*

Subdivision *a* of the section is sweeping in its extension.

"The Commission shall . . . investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this act." It "shall make an inventory which shall list the property . . . in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission."

Subdivision *b* contains directions as to the method of showing values and thus fulfils the promise of subdivision *a* that such directions as to form will be "hereinafter provided."

The provisions are distributed into five clasess.

Under the heading "first," there is a command to the Commission to "ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained and the reason for their differences, if any."

*The events leading up to the adoption of the act and the public policy it was designed to further will be found clearly stated in Sharfman, The Interstate Commerce Commission, vol. 1, pages 117 to 137.

For convenience of reference this part of the directions that are grouped under the heading "first" will be described as number one.

Under the same heading there is, however, another part which will be identified as number two.

"The Commission shall in like manner ascertain and report separately other values and elements of value, if any, of the property of such common carrier and an analysis of the methods of valuation employed, and of the reasons for the differences between any such value and each of the foregoing cost values."

The division described as "second" contains directions for a report of the original cost and present value of lands, rights of way and terminals separately from improvements.

The "third" division deals with the valuation of property held for purposes other than those of a common carrier; the "fourth" with the financial history and corporate structure of the carriers; and the "fifth" with the ascertainment and valuation of governmental aids or gifts.

By subdivision e the Commission is empowered, except as otherwise provided, "to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value."

The Commission at an early stage in its labors was confronted with the problem as to the proper method of valuation where there was a division of interest between the ownership and the use. The first exposition of its views upon that subject will be found in a decision made July 31, 1918, in the matter of the valuation of the Texas Midland Railroad, 75 I. C. C. 1, 20, 121, 122. The substance of its ruling there was that where property is jointly used by two owners, the details will appear in the inventory of each; that where property is owned by one carrier, and exclusively used by another, the details will appear in the inventory of the owner, but in addition the value will be shown in the inventory of the user; that where a carrier owns and uses property but gives to some other carrier not the exclusive use but only a qualified use in common with itself, such as the right to use its tracks, the fact and nature of the use will be described in the inventory of both the owner and the user, but the value of the property will be reported in the inventory of the owner solely. "The physical property,"

said the Commission (p. 124), "is not changed by this dual use." "The law requires the ascertainment of values for property owned or used, but not the value of the use." 75 I. C. C. 24. Despite the comprehensive command to report the value of all the proprety owned or used by any common carrier subject to the act, there is still, so the Commission held, some latitude of judgment as to the extent to which the component elements of worth are to be separated, and a specific valuation allocated to each.

The Commission has steadfastly adhered to these principles in the fulfilment of its task. Along the lines there charted, a thousand inventories and reports have been made, it is said, during the nineteen years that have gone by since the Valuation Act was passed. Cf. Report of the I. C. C. for 1931, p. 68. In only one instance, except this, has the method, so far as we are informed, been challenged in the courts as a departure from the statute, and there mandamus was refused. *Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 6 F. (2d) 692. Cf. *Matter of Kansas City Southern Ry. Co.*, 75 I. C. C. 223, 234. What was done in this inventory has at least that sanction of validity which is born of long administrative practice. *United States* v. *Moore*, 95 U. S. 760, 763; *Logan* v. *Davis*, 233 U. S. 613, 627; *Brewster* v. *Gage*, 280 U. S. 327, 336; ~~*American Bond and Mortgage*~~ *Co.* v. *United States*, 282 U. S. 374, 378. In conformity with that practice the Commission overruled the protest of the carrier, and held that the trackage rights over the Harlem roadbed and the rights of user in the New York and Boston terminals would be reported in the inventory as valuable rights or interests belonging to the carrier, but without assigning to them a specific value separate from the value given to the system as a whole. Like "going concern value" and that of many other intangibles, the value of these qualified privileges of user, falling short of ownership or full possession of the physical thing, was not excluded altogether as an element to be reflected in the ultimate appraisal. Cf. *Texas Midland R. R. Case*, 75 I. C. C. 1, 69. What was held was no more than this, that the contribution of such factors was not a separate thing of value to be segregated from all the other values inhering in a unified system of railroad operation, and ticketed by itself. "We report all the costs which are specifically named in the valuation act, on which we can obtain tangible data, and we find a single sum value after a consideration of those

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tangible costs and the intangible elements of value which inhere in a fully organized and operating property." Cf. *Des Moines Gas Co.* v. *Des Moines*, 238 U. S. 153, 165; *McArdle* v. *Indianapolis Co.*, 272 U. S. 400, 414. These are the words of the Commission in answering the carrier's objection that the going concern value had not been separately stated. Its answer might have been the same if it had been meeting the objection that privileges of user, incapable of appraisal in terms of the cost of the thing used, had been described in the inventory without specific appraisal of the value of the use.

We are thus remitted to the question whether this method of classification, accredited to us, as it is, with all the authority springing from administrative practice, is a departure from any duty created by the statute, or, more accurately, from any duty so peremptory and unmistakable as to be enforceable by mandamus. True indeed it is that by the express direction of the statute there is to be a valuation of all the property owned or used by any carrier subject to the act. We do not travel very far upon the road to a solution of our problem by repeating that command. A valuation there is to be, for so it is commanded in subdivision *a*, but only "as hereinafter provided," and to discover what is "hereinafter provided," we must look to subdivision *b*. If there is nothing in subdivision *b* calling for the separate classification and appraisal of the value of a right to use, then the duty so to classify and appraise is not created by the statute, and certainly not created in any clear and peremptory way.

We must distinguish between the ultimate result to be attained by the preparation of the inventory and the details of form and method prescribed for its attainment. To admit that there must be a valuation of the whole is not equivalent to admitting that a separate and specific valuation must be allocated to every kind of property interest embraced within the whole. To what extent a group of interests shall be resolved into its elements is thus a question of degree. If a barren literalism were to guide us, subdivision could be carried down to the dimensions of an atom. We are not to push the mandate to "a drily logical extreme." *Nobel State Bank* v. *Haskell*, 219 U. S. 104, 110. A roadbed and a terminal are property, but so are license privileges, and contracts for supplies, and rights *in personam* as well as those attaching to a *res*. Was it the meaning of the lawmakers that rights and inter-

ests such as these were to have a value specifically assigned to them apart from their relation to the "going value" of the business? Not even counsel for the carrier would have us go so far. By concession there are forms of property which are to be considered by the Commission as contributions to a larger whole, and not as things apart. We were told upon the argument that the interests in the Harlem tracks might have been omitted from the inventory if they had been licenses, and nothing more. Specific valuation became necessary because, in the view of counsel, the interests had their basis in a franchise or an easement. A like distinction was drawn in respect of the interests in the terminals. They might have been omitted from the inventory, however great their value, if the privilege of use had been derived from a contract giving rise to a mere license. The omission of a specific valuation became wrongful, it was argued, if the interests amounted to a title or estate. The Commission declined to go into these niceties. "It is . . . not necessary for us to determine whether the right of use in the carrier is best defined by reference to it as a license to use, an easement or a trackage right." We shall practise a like restraint, observing only in passing that the proper classification is obscure, (*Union Pacific Railway Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 163 U. S. 564, 582, 583; *Union Pacific Railway Co.* v. *Mason City Railroad Co.*, 222 U. S. 237, 247, 248), and that the carrier by its own conduct has admitted the obscurity. In its annual reports to the Commission, starting in 1888 and including the year preceding the beginning of this suit, its interests in the Harlem tracks and in the New York and Boston terminals are reported under "class 5", which is described in the report as including "all tracks operated and maintained by others, but over which the respondent has the right to operate some or all of its trains. In roads of this class, the respondent has no proprietary rights, but only the rights of a licensee." What concerns us at the moment, however, is not the fitness or the unfitness of one classification or another. What matters for present purposes is the carrier's concession that the command to prepare an inventory in which all the property shall be valued does not mean that every property interest shall be separately valued. Something, then, is to be abated from the dictates of an implacable literalism allowing no exceptions. At one point or another a line

of division has to be drawn between the property to go in and the property to stay out. The location of the line will involve considerations of legislative intention and administrative judgment. Division being necessary, did the members of the Commission ignore a plain and certain duty in making it where they did?

In our summary of the statute, the provisions under the heading "first" of subdivision *b* were separated into two parts, described as numbers one and two. Part number one was intended to procure the valuation of a railroad considered as a physical thing. Every "piece of property" is to be inventoried, and with reference to every "piece" so inventoried the Commission is to ascertain the investment in the thing, and the cost of producing it anew. The factors have been made familiar by historic litigations. *Smyth* v. *Ames*, 169 U. S. 466; *St. Louis & O'Fallon Railway Co.* v. *United States*, 279 U. S. 461. But the statute does not mean that there shall be a duty to appraise in terms of cost if the interest to be appraised is such that the cost of the thing is without relevance as a criterion of the value of the interest. There can be no plain and certain duty, enforceable by mandamus, to proceed to a valuation that will be a snare or a deception. Here the New Haven has not invested anything in the roadbed or the terminals. It is not affected for good or ill by fluctuations in the cost of building them anew. Whatever the legal category in which its interests are to be placed, the value is independent of the cost of the thing in which those interests inhere. Plainly untenable is its contention that the amount to be allowed to it is the proportion of the cost value of the property that would result from a division of such value between itself and the Central in the ratio of use. 30 I. C. C. Val. Rep. 1 at pp. 31, 33. Such a method of appraisal ignores the millions of dollars payable year by year in perpetuity to keep the privilege alive. It treats as an investment what is merely a contingent debt. The value of the trackage rights, whether one views them as amounting to a license or an easement, is not the cost of the roadbed, but the difference between the value of the use and the rent to be paid therefor. The value of the interests in the terminals, whatever the proper name for them, must be measured in the same way. Today, under the Transportation Act of 1920, the Commission may compel a carrier owning terminal facilities to grant to other carriers the use of such facilities, including main line tracks for a reasonable distance, in

return for a compensation prescribed as just and reasonable. 49 U. S. Code 3 (4). For all that appears the rights now in controversy might continue to be enjoyed though the agreements set forth in the record were to be rescinded or annulled, and enjoyed at a smaller cost, if a rental lower than the existing one were to be fixed by the Commission. Be that as it may, the value for the New Haven is not the value of the thing or piece of property owned or used, or of any fractional interest therein. The value for the New Haven is the value of the use, which is measured by the difference between the rent payable under the lease and the fair and reasonable rent that would be the compensation payable to the owner in the absence of agreement. There is nothing to indicate that the carrier laid testimony before the Commission as to what this difference would be. Cf. *Texas Midland Railroad Case*, 75 I. C. C. 1, 24. It took its stand upon the position that *pro tanto*, in proportion to its use, it was the owner of the fee.

The argument will be made, however, that the Commission is inconsistent. Appraisal on the basis of cost has been thought to be suitable where the lessee has a possession exclusive of the owner. Why, then, is it not suitable also where the interest of the lessee is in common with the owner, and this though the interest fluctuates from day to day with the measure of the use? No doubt the practice of the Commission has been what the argument assumes. The practice has been, as we have already pointed out, when the possession of a lessee is exclusive of the possession of the owner, to inventory leased property in the name of each of them, setting down for each the original and the reproduction cost of the subject matter of the lease, setting down the fact of use, and making allowance thereafter for any increase or deduction due by reason of such use when costs are readjusted and corrected to express the final values.* Never upon the face of the inventory has there been a specific valuation of the interest of the lessor and that of the lessee considered as estates in the land and structures and apart from the valuation of the property demised. The Commission has been unfaltering in its adherence to the principle that the value to be reported is the value of the thing, and not of every

*The practice is explained by Mr. Esch, formerly Valuation Analyst of the Commission, in an article "Valuation of Leased Railroad Property." 31 Yale L. J. 273, 276, 277.

33 272,

interest connected with the thing. Whenever the nature of a lease is such that the cost of what is leased may appropriately be taken as an index of the value of the leasehold, the inventory and the valuation have been made upon that basis. Whenever the interest has been such that cost is not an index, the test of cost has been rejected. In the application of these methods there has been no discrimination between this carrier and others. In the inventory now in controversy there are properties owned by the New Haven, and wholly leased to other lines, and properties owned by other lines, and wholly leased to the New Haven. For all these properties the reproduction cost is set forth in the inventory of the New Haven System without specific appraisal of the value of the reversion as an interest subject to the lease, or the value of the lease as an interest distinct from the reversion. The New Haven itself is thus the beneficiary of the principle that the inventory is to set forth the value of the thing, and not of every interest touching the enjoyment of the thing.

We recur, then, to the question why the method of appraisal that has been thought to be appropriate where a lessee has the sole use may not be followed here also where in common with the owner the lessee has an undivided interest in the use of tracks and terminals in return for yearly payments. Perhaps a sufficient answer is that it is never mandatory on the Commission to value the interest of any lessee on the basis of the cost, though such a method may in certain circumstances be appropriate as an exercise of discretion. But other answers are available, if this be thought inadequate. There can be no doubt that even in its application to a sole lessee, the method of valuing a lease on the basis of the cost of the property demised is at best a rough and ready approximation. Even so, the formation of a rate base by treating a lessee as owner and measuring a fair return of income as a percentage of the cost may yield a reasonable average of accuracy where the interest of the lessee is constant and the rentals that it pays are excluded from the computation of its operating expenses. Such exclusion is required by the accounting rules of the Commission where the lessee has the sole use. The practice is different, however, where a carrier has the benefit of joint-facilities. There the rentals paid for the use of the facilities are part of the operating expenses, and were so treated in the case at hand. This treatment of them has the support of statute

(Transportation Act, 1920; 49 U. S. Code, § 15a [1])* as well as of administrative practice. A carrier receives a duplication of benefits if it is permitted to include its rentals as an operating expense while earning a return upon the value of an unincumbered fee.** Aside from this objection, a lease which gives to the lessee, not exclusive possession of the property demised, nor even a fixed share, but a share fluctuating from time to time with the variations of the business, is too uncertain and inconstant to be valued with even approximate correctness by the test of the cost of the property subjected to the use. The Commission was satisfied to adopt the formula of cost where the lease was such as to lead it to believe that the margin of error would not be inordinately large.† Nothing in the statute makes it mandatory to apply the same formula, inaccurate at best, to leases of a different nature if the margin of error would thereby be increased.†† Nor is there anything in the objection that by force of § 15a of the Transportation Act, 1920, a form of inventory permissible under § 19a of the Valuation Act of 1913 is permissible no longer. The Act of 1920 authorizes the Commission to "utilize the results of its investigation under § 19a" of the Interstate Commerce Act for certain additional purposes "in so far as deemed by it available."

*"The term 'net railway operating income' means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents."

There is a like direction in the act incorporating the Boston terminal.

**Esch, Leased Railroad Property, *supra*, at p. 274.

†"Not only is the matter of proportion of use at any particular moment largely speculative, but it varies from time to time." Esch, *supra*, at pp. 278, 279.

††Upon a hearing before the Senate Committee, Senator La Follette, the Chairman, inquired of a witness, Prof. Commons, as to the proper method of valuation where property was leased. The answer was in substance that such a case might be taken care of in either one of two ways, by valuing the property as if it were owned by the lessee or by making allowance for the rent as an operating expense, and that it would be the function of the Commission to determine the preferable method in any given situation. The members of the Committee apparently acquiesced. Senator La Follette adverted to the possibility of a double valuation if one railroad had the privilege of running its trains over the tracks of another, and added that, of course, only one valuation would be proper. Physical Valuation of Property of Common Carriers, Senate Committee on Interstate Commerce, 62nd Congress, 3rd Session, Senate Library, Vol. 15, No. 6, pp. 128 and 129.

49 U. S. Code, § 15a (4). There is nothing in the new statute to suggest that earlier inventories are to be revised, or that forms of valuation lawful in the past are to be unlawful in the future.

What has been written serves, we think, to show that the interests in controversy are not affected by that part of subdivision *b* of the statute which we have identified as number one. The question remains whether a specific valuation is made mandatory by the provisions of the part identified as number two. "The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier and an analysis of the methods employed, and of the reasons for any differences between any such value and each of the foregoing cost values." The carrier did not build its case on that command in making proof to the Commission. It took the position, on the contrary, that it was an owner of the roadbed and the terminals in proportion to its use and made its proof accordingly. See *Matter of New York, New Haven & Hartford Railroad Company*, 30 Val. Rep. I. C. C. 1, 31, 32, 33. There can surely have been no breach by the Commission of an inflexible and certain duty in omitting from an inventory a separate and specific estimate of the difference between the value of the use and the rents reserved to the lessors when the protest of the carrier was silent as to what the valuation ought to be. The result will be the same, however, though this defect be overlooked. The command to report other elements of value does not impose a duty, inflexible and certain, to appraise the value of a use which is unrelated to the value of what is subject to the use. The ends to be attained are different. They can be gathered from a report of the Senate Committee on Interstate Commerce submitted to the Senate in February, 1913. 62nd Congress, 3rd Session, No. 1290, p. 8. The report begins with a consideration of the three criteria of value that are stated in part one of subdivision *b*: first, original cost; second, cost of reproduction new; third, cost of reproduction, less depreciation. From these it passes to a consideration of the effect and purpose of part two, prefacing the discussion with the title "other values and elements of value; that is, intangible values." "This classification," the report continues, "provides for going value, good will value, and franchise value. Whether any or all of these values will be considered by the Commission or the courts in de-

termining the fair value of the property, and if so, what importance shall attach to them is a matter for the Commission and the courts. Especially as to intangible values, the Commission and the courts are in a transition period. The elements of value which will finally constitute fair value for rate-making purposes are steadily narrowing. They are not expanding. No decision by Commission or court will stand which is ultimately found to be unfair to the public or to the common carrier. The committee has, it is believed, provided for ascertaining every element of value which, upon recognized authority, should be considered". Congress had no thought to tie the hands of the Commission by imposing a peremptory duty to classify in any particular way the factors supplementing or modifying the significance of cost, and to allocate to each a specific value. The report makes it clear that Congress did not know what those factors were, and that the Commission, guided by the courts, was to work out in its own way a practical and fair result. Whatever duty was imposed had its basis in a general admonition which left a wide and indefinite margin of judgment as to the method of obedience.

In the light of these considerations, the aim of the statute in bidding heed to be given to other elements of value than those of cost alone, is readily discerned. Its aim is to afford play for the correction of the errors certain to result where the value of a railroad is identified with the cost of its component parts without reference to the values generated or extinguished by the union of the parts into a single and organic whole. Effects that are the resultant of two or more forces working in combination may be capable of appraisal when it would be difficult, if not impossible, to estimate the consequences of any one of the forces operating singly. For an illustration of this truth we have only to bear in mind the obscure and varied factors, psychical as well as physical, that enter into the creation of the "going value" of a business. Not infrequently the value of these intangibles will be an aggregate made up of elements too deeply interpenetrated for any specific figure to be set opposite to one of them dissevered from the others. What is true of "going value" is true of roadbeds and stations, of trackage rights and rights in terminals. As soon as one passes beyond an appraisal of the cost, the increments or the deductions involve estimates of relation, the parts being worthless

or nearly so unless adapted to the whole. Not a mile of track would be worth the cost of reproducing it, nor a trackage right the rental, if there were not stations at either end. Not a station would be worth the cost of building it anew if there were not roadbeds or tracks or trackage rights beyond. The final value set down in the report of the Commission shows that over and above the cost of reproduction less depreciation, something has been added, in appraising the property of the carrier, to express the value of the whole as distinguished from the total of the parts. Not even the depreciated reproduction cost, let alone something in addition, would have been reported as the final value if the road had been viewed as a congeries of fragments. To argue that the Commission ignored these intangibles altogether because it failed to value them specifically is to miss the significance of the whole process of appraisal. Every trackage contract and every terminal use, in so far as it contributes to the unity of the system, is reflected in the final value ascribed to the physical things that are listed in the inventory. The Harlem trackage contract is there reflected, for the reproduction cost would cease to be a measure of the value if the trains stopped short at Woodlawn. The rights in the New York and Boston terminals are there, for again the reproduction cost would be of no avail as a criterion if there were no terminal facilities for passengers at Boston or New York. The question is not whether trackage rights and rights in terminals are interests that the Commission is at liberty to treat as non-existent. The question is whether they are interests of such a kind that they must be specifically valued instead of being viewed as factors that enter by infusion into the lifeblood of the organism. If there is anything in the statute requiring values of that order to be separately stated, the carrier has not pointed to it. In the absence of such a duty, nothing in the report of valuation justifies a holding that any property interest was excluded altogether. "We have given careful consideration," said the Commission, "to all facts of record and pertaining to the value of the common-carrier property of the carrier as an organized, developed, well-maintained, seasoned property in operation as a going concern." Many diverse elements, reacting one upon another, have been fused in an act of judgment drawing its sustenance from all.

A word may yet be due with reference to those provisions of subdivision *b* of the statute which are set forth under the heading

"second." "Such investigation and report," it is there said, "shall state in detail and separately from improvements the original cost of all lands, rights of way and terminals owned or used for the purposes of a common carrier and ascertained as of the time of dedication to public use, and the present value of the same." The rights of way there in view are those that involve an investment of the moneys of the carrier, and result in the possession of the land itself, the roadbed on which the tracks are laid. *Georgia* v. *Cincinnati Southern Railway Co.*, 248 U. S. 26, 28. They do not include the privilege of hauling cars for a rental over the roadbed of another. What is true of rights of way is true also of terminals. If the New Haven has no interest in the improvements constituting the roadbed and the terminal stations sufficient to require a specific valuation of its interests under parts one and two of subdivision "first," it has none sufficient to require such valuation under subdivision "second."

We do not go beyond the necessities of the case before us in shaping our decision. Whether an inventory such as this one, omitting a specific valuation of important rights and interests, gives full or adequate effect to the intention of the lawmakers, we are not required to determine. In later or collateral controversies that question may be pertinent. For the purpose of this case, it is enough to hold, as we do, that the duty of specific valuation, if it exists, has been imposed upon the Commission too vaguely and obscurely to be enforced by a mandamus. *United States ex rel. Redfield* v. *Windom*, 137 U. S. 636; *Wilbur* v. *United States*, 281 U. S. 206. One cannot rise from a study of the statute in the setting of its history and of the administrative practice under it and hold at the end an assured belief that the Commission has been commanded by the Congress to do the act omitted. Where a duty is not plainly prescribed, but is to be gathered by doubtful inference from statutes of uncertain meaning, "it is regarded as involving the character of judgment or discretion," (*Wilbur* v. *United States*, *supra*), and mandamus is thereby excluded. The case at hand differs in essentials from *Kansas City Southern Railway Co.* v. *Interstate Commerce Commission*, 252 U. S. 178, where a specific, unequivocal command, removed after the decision by an amendment of the statute,* was laid upon the Com-

*See Act of June 7, 1922, c. 210, 42 Stat. 624.

mission to value a particular thing, and the Commission ignored the command to the extent of refusing to hear any evidence whatever. The ruling in that suit has been explained in later cases, and confined to its peculiar facts. *Interstate Commerce Commission* v. *Waste Merchants Association*, 260 U. S. 32, 35; *United States* v. *Los Angeles Railroad Co.*, 273 U. S. 299, 311.

Public policy forbids that the work of the Commission in the fulfilment of the stupendous task of valuation shall be hampered by writs of mandamus except where the departure from the statute is clear beyond debate. The report is not a stage in a judicial proceeding affecting this carrier or others. "It is the exercise solely of the function of investigation." *United States* v. *Los Angeles Railroad Co., supra*, p. 310. The final valuations made in it will indeed be *prima facie* evidence against the carrier in proceedings under the Commerce Act. 49 U. S. Code, § 19a, (1). Even so, the opportunity to contest them, if at any time they are introduced in evidence, is "fully preserved to the carrier, and any error therein may be corrected at the trial." *United States* v. *Los Angeles Railroad Co., supra*, p. 313. The valuation of the railroads of the country has been ordered by the Congress in the belief that this new "Domesday Book" will promote an important public purpose. Nearly twenty years have passed since that belief found expression in the enactment of the statute, and the work is still unfinished. Report of the I. C. C. for 1931, p. 68. In the meantime the enactment of § 15a of the Transportation Act of 1920 has made the need for valuation more imperative than ever. 49 U. S. Code, § 15a. In any work so vast and intricate, what is to be looked for is not absolute accuracy, but an accuracy that will mark an advance upon previous uncertainty. If every doubt as to the extent and form of valuation is to be dispelled by mandamus, the achievement of the ends of Congress, already long deferred, will be put off till the Greek Kalends.

The judgment of the Court of Appeals of the District of Columbia is reversed, and the judgment of the Supreme Court dismissing the petition affirmed.

Mr. Justice Van Devanter, Mr. Justice McReynolds and Mr. Justice Sutherland are unable to concur in this decision. But, as the decision is put distinctly on the ground that the specific duty

sought to be enforced by mandamus is not so definitely and plainly described by the statute as to justify the application of that remedy, and the question whether the inventory in controversy, omitting a specific valuation of important rights and interests, gives full or adequate effect to the intent of the statute, is not determined but distinctly reserved for future contestations, they deem it sufficient to say at this time that they regard the reasons assigned by the Court of Appeals for its judgment as sound and requiring an affirmance of its judgment.

The CHIEF Justice and Mr. Justice BUTLER took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.